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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

IN RE QUESTCOR
 PHARMACEUTICALS, INC.
 SECURITIES LITIGATION

CASE NO.: NO. 8:12-CV-01623 DMG
 (JPRx)

(1) DEFENDANT'S NOTICE OF MOTION
 AND MOTION TO COMPEL FURTHER
 INTERROGATORY RESPONSES AND
 PRODUCTION OF DOCUMENTS ;

(2) JOINT STIPULATION ADDRESSING
 DEFENDANT'S MOTION TO COMPEL;

(3) DECLARATION OF VIRGINIA F.
 MILSTEAD (separate cover); AND

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) (4) DECLARATION OF ERIK W.
) LUEDEKE (separate cover)

) Magistrate Judge: Jean P. Rosenbluth
) Courtroom: 6A

) Hearing Date: August 28, 2014

) Hearing Time: 10:00 a.m.

) Discovery Cutoff: December 19, 2014

) Pretrial Conference: November 10, 2015

) Trial Date: December 1, 2015

) Scheduling order attached.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 28, 2014, or as soon thereafter as the matter may be heard, in Courtroom 6A of the above-referenced Court, located at 411 W 4th Street #1053, Santa Ana, CA 92701, Defendant Questcor Pharmaceuticals, Inc. (“Questcor” or “the Company”) will, and hereby does, move the Court to compel further responses to Questcor’s First Set of Interrogatories, and to produce documents pursuant to Questcor’s First Request for the Production of Documents pursuant to Federal Rules of Civil Procedure 33, 34, and 37, as detailed herein. Given Plaintiffs’ tardy and incomplete response, Questcor reserves the right to move the Court to modify the scheduling order, including, but not limited to, the class certification motion deadlines.

This motion is based on this Notice of Motion and Motion to Compel Further Interrogatory Responses and Production of Documents (the “Motion to Compel”), the attached Joint Stipulation Addressing Defendant’s Motion to Compel, the Declaration of Virginia F. Milstead in Support of Joint Stipulation Addressing Defendant’s Motion to Compel, all pleadings and papers filed in this action, and upon such other and further oral or documentary evidence as may be presented to the Court at or prior to the hearing on this motion.

DATED: August 6, 2014

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: /s/ Peter B. Morrison
Peter B. Morrison
Attorneys for Defendant Questcor Pharmaceuticals, Inc.

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JOINT STIPULATION

Defendant Questcor Pharmaceuticals, Inc. (“Questcor”) and Plaintiffs Plumbers and Pipefitters National Pension Board, West Virginia Investment Management Board (“West Virginia”), and Steven Glucksberg (collectively, “Plaintiffs”) respectfully submit this joint stipulation pursuant to Local Rule 37-2 regarding Plaintiffs’ responses and objections to Questcor’s First Set of Interrogatories (“Interrogatories”) and First Request for Production of Documents (“Document Requests” or “Requests”) served on Plaintiffs on March 6, 2014. Pursuant to Local Rule 37-1, on April 30, June 7, June 20, June 30, July 1, and July 3, 2014, the parties conferred in an attempt to resolve their disputes but, according to Questcor, were unable to do so with respect to Interrogatories 1 and 3, and Document Requests 1-22, 23-27, 28-30, 31-32, 34-36, and 43. (Declaration of Virginia Milstead (“Milstead Decl.”) ¶¶ 2-14.)

I. Questcor’s Introductory Statement

Defendants have produced over 60,000 documents totaling over 300,000 pages. On July 24, over *four months* after Questcor propounded discovery, Plaintiff West Virginia finally produced a mere 84 documents partially responsive to, at the most, three or four of Questcor’s *44* document requests. *Neither of the other two Plaintiffs has produced a single document.* (Milstead Decl. ¶¶ 15-16.) In contrast to the stinginess of their own production, since the start of discovery Plaintiffs have continuously demanded document production from Questcor and dozens of third parties in hopes of finding a tenable claim for their securities fraud action. Plaintiffs have engaged in this one-way discovery campaign – which has already been limited by this Court and the District Court – while at the same time obfuscating the factual basis, or lack thereof, for their own action.¹ Specifically, in response to Questcor’s

¹ Both this Court *and* the District Court have already curtailed Plaintiffs’ aggressive campaign. On March 19, 2014 Questcor filed a motion for a protective order seeking to quash or limit the production of documents served on seven non-parties. On May 1, this Court granted Questcor’s motion in large part, including quashing the subpoena on the Chronic Disease Fund (“CDF”) in its entirety. Plaintiffs moved with the District Court to vacate the order quashing the CDF subpoena, arguing this Court erred in finding that discovery into CDF is irrelevant to Plaintiffs’ claim that statements regarding Questcor’s financial status and financial forecasts were false and misleading. The District Court denied

(cont’d)

1 March 2014 Interrogatories and Document Requests, Plaintiffs have:

- 2 • refused to identify persons who have provided information concerning the
3 Complaint, (see Interrogatories 1 and 3), arguing that they have satisfied their
4 discovery obligations by referring Questcor to the list of over 150 *potential*
5 witnesses provided in Plaintiffs' initial disclosures, and asserting that the
6 attorney work-product doctrine protects Plaintiffs from doing anything more.
- 7 • refused to produce documents concerning their investment history in Questcor
8 securities after the putative Class Period, arguing that such information is
9 irrelevant to their claims (see Document Requests 1-10).
- 10 • refused to produce documents in support of their own allegations and claims,
11 hiding behind the attorney work-product doctrine as a safe haven from fulfilling
12 basic discovery obligations (see Document Requests 23-27, 33).
- 13 • refused to articulate whether they have responsive documents to Requests they
14 did not object to, or to even confirm they have conducted a diligent search for
15 responsive documents as required by the Federal Rules of Civil Procedure (see
16 Document Requests 2-22, 28-30, and 43), and have not yet produced documents
17 they affirmatively agreed to produce (see Document Requests 31-32, 34-36).

18 Plaintiffs' objections are unfounded. First, as to Interrogatories 1 and 3, courts reject
19 the attorney work-product doctrine as protection against "interrogatories seeking the identity
20 of witnesses or documents," Kolker v. VNUS Med. Techs. Inc., 2011 WL 5057094, at *6
21 (N.D. Cal. Oct. 24, 2011), and have held "it is technically improper and unresponsive for an
22 answer to an interrogatory to refer to outside material," such as pleadings and initial
23 disclosures. Equal Rights Center v. Post Prop. Inc., 246 F.R.D. 29, 35 (D.D.C. 2007).

24 Second, in federal securities class actions, courts have compelled the production of
25 documents seeking a plaintiff's post-Class Period investment history, (see Document
26 Requests 1-10), because such information may undercut a plaintiff's showing of reliance, and
27 relatedly, render a plaintiff an inadequate class representative for class certification. See, e.g.,
28 Feldman v. Motorola, Inc., 1992 WL 137163, at *2 (N.D. Ill. June 10, 1992); Rolex Empl.

(*cont'd from previous page*)

Plaintiffs' motion and affirmed this Court's order, holding "it is clear the complaint's theory
of misrepresentation based on artificial inflation of financial status is based on statements
made in scientific studies, not financial support for co-pays or fraud relating to co-pays or
affordability of Acthar for patients." Thus, the District Court rejected Plaintiffs' attempt to
use discovery to "develop new claims" "not already identified in the pleadings."
(7/21/2014 Order, at 1, 4-5, ECF No. 151) (quotation omitted).

1 Ret. Trust v. Mentor Graphics Corp., 136 F.R.D. 658, 664 (D. Or. 1991) (plaintiffs’ stock
2 purchases “after he learned of the alleged misrepresentations” “severs the link between the
3 alleged misrepresentations” and plaintiff’s “stock purchases” and “rebutts the presumption
4 that [plaintiff] relied on the alleged misrepresentations in making his purchases”).

5 Third, based on the principle “Defendants are entitled to know the factual basis of
6 Plaintiffs’ claims in order to prepare for trial,” courts routinely reject the attorney work-
7 product doctrine as a basis for refusing to produce documents that support the allegations in
8 a complaint. Plumbers & Pipefitters Local 572 Pension Fund v. Cisco Sys., Inc., 2005 WL
9 1459555, at *6 (N.D. Cal. June 21, 2005); In re Jet Network, LLC, 2012 WL 2998610, at *5
10 (S.D. Fla. July 23, 2012) (rejecting application of attorney work-product doctrine to request
11 for documents supporting claims, noting litigation “should not be a game of hide the ball”).

12 Finally, the Federal Rules require responding parties to “make a timely, reasonable,
13 and diligent search for all documents responsive to the [propounding] party’s discovery
14 requests.” Zander v. Craig Hosp., 2011 WL 834190, at *1 (D. Colo. Mar. 4, 2011). If a
15 party fails to “demonstrate[e] that a diligent search and reasonable inquiry has been made in
16 an effort to locate the requested documents,” courts have compelled the party to “either
17 produce the documents, or amend their response to state that a diligent search and reasonable
18 inquiry ha[s] been conducted, and to state the reason they are unable to comply...”
19 Waterbury v. Scribner, 2008 WL 2018432, at *6 (E.D. Cal. May 8, 2008).

20 Apparently understanding the legal baselessness of their positions, Plaintiffs have
21 stretched out the meet-and-confer process on Questcor’s **March 6** discovery requests for
22 nearly three months since Questcor first initiated the meet-and-confer process in an April 21
23 letter. (Milstead Decl. Ex. 1.) During an April 30 meeting between the parties, counsel for
24 Plaintiffs stated that he would provide legal authority in support of Plaintiffs’ objections at
25 issue in this Motion. (Milstead Decl. ¶ 5.) Counsel also stated that they would inquire as to
26 whether Plaintiffs had documents responsive to several of Questcor’s Document Requests.
27 (Id. ¶ 6.) Plaintiffs failed to promptly do so, despite three separate requests made by
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1 Questcor from May 16 to June 20. (Id. Exs. 2-4.) It was not until June 30 that Plaintiffs
2 purported to provide the legal authority they referenced in a meeting held *two months* earlier.
3 (Id. Ex. 5.) However, despite another letter from Questcor on July 1, Plaintiffs have refused
4 to identify (i) to which Document Requests Plaintiffs intend to produce documents, or (ii) to
5 which Document Requests Plaintiffs have no responsive documents. (See Id. Exs. 6 & 7.)

6 The Federal Rules “exhibit little patience for gamesmanship and attempts to withhold
7 discoverable materials and information,” Lane v. Page, 2011 WL 1004825, at *4 (D.N.M.
8 Feb. 10, 2011), and the Court should not countenance Plaintiffs’ one-way approach to
9 discovery.² Questcor respectfully requests the Court compel: (i) further responses to
10 Interrogatories 1 and 3; (ii) production of documents responsive to Requests 23-27, and 33;
11 (iii) production of documents responsive to Requests 1-10 without limiting it to documents
12 during the purported Class Period; and (iv) production of documents responsive to Requests
13 2-22, 28-30, 31-32, 34-36, and 43, or a supplemental response stating a diligent search has
14 been conducted and the reasons Plaintiffs are unable to comply. Questcor requests the Court
15 require all documents produced within two weeks of entry of order.³

16 **II. Plaintiffs’ Introductory Statement**

17 Questcor submits its Joint Stipulation Addressing Defendant’s Motion to Compel
18 (“Motion”) despite failing to confer in good faith as directed by Federal Rule of Civil
19 Procedure 37(a) and Local Rule 37. On June 30, 2014, Plaintiffs provided Questcor with
20 authority it had requested supporting certain of Plaintiffs’ objections to Questcor’s
21 Interrogatories and Requests. *See* Milstead Decl., Ex. 5. Questcor responded on July 1, 2014

23 ² “The party who resists discovery has the burden to show that discovery should not be
24 allowed, and has the burden of clarifying, explaining, and supporting its objections.”
25 DIRECTV v. Trone, 209 F.R.D. 455, 458 (C.D. Cal. 2002)). The Ninth Circuit has held this
is a “heavy burden.” Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975)
Plaintiffs fail to carry their heavy burden for the reasons provided above and below.

26 ³ Given Plaintiffs’ tardy and incomplete response to date, Questcor reserves the right to
27 move the Court to modify the scheduling order, including, but not limited to, extending the
class certification motion deadlines.

1 by demanding immediate production of documents in response to certain requests, requesting
2 “additional information” regarding many of Plaintiffs’ objections over which Plaintiffs
3 believed the parties had reached accord, and threatening a motion to compel. *Id.*, Ex. 6. On
4 July 3, 2014, Plaintiffs clarified that it was their understanding that the parties had agreed
5 Plaintiffs would “produce relevant, non-privileged documents – to the extent they exist and/or
6 for the time period April 4, 2011 through September 21, 2012 – in response to a vast majority
7 of Questcor’s individual requests.” *Id.*, Ex. 7. Plaintiffs additionally indicated to Questcor that
8 they would soon initiate their production of these materials and sought confirmation that all
9 outstanding issues concerning Questcor’s discovery had been addressed.⁴ *Id.*

10 Rather than respond to Plaintiffs’ attempt at compromise or seek to engage in further
11 negotiation over the purported “disputes” set forth herein, Questcor unilaterally declared that
12 further discussion would be fruitless by prematurely seeking intervention by this Court.
13 Questcor’s blatant disregard for Plaintiffs’ effort to compromise and abrupt filing of this
14 Motion is inconsistent with its obligations to meet and confer and attempt to resolve these
15 issues in good faith.

16 Beyond being premature, Questcor’s Motion seeks to compel the identification of
17 sources and the production of documents that are classic work product and thus afforded
18 qualified protection from disclosure. It is well established that the work production doctrine
19 protects “trial preparation materials that reveal an attorney’s strategy, evaluation and
20 investigation,” including the “the identity of witnesses interviewed or otherwise relied upon by
21 plaintiffs.” *In re MTI Tech. Corp. Sec. Litig. II*, No. SACV 00-0745 DOC (ANx), 2002 U.S.
22 Dist. LEXIS 13015, at *7, *10 (C.D. Cal. June 14, 2002). Because Questcor has not
23 demonstrated a substantial need or undue hardship in obtaining the material it seeks, the work
24 product doctrine should not be pierced. *See* Fed. R. Civ. P. 26(b)(3).

26 ⁴ Plaintiffs commenced their rolling production of responsive documents on July 24,
27 2014, four days prior to being served with this Motion. *See* Ex. A attached to the
28 Declaration of Erik W. Luedeke (“Luedeke Decl.”), filed concurrently herewith.

1 Similarly, much of the material Questcor seeks through its Motion is wholly irrelevant
2 to any aspect of this litigation. Under the Federal Rules of Civil Procedure, discovery is only
3 permitted so long as it is relevant, or reasonably calculated to lead to the discovery of
4 admissible evidence. Fed. R. Civ. P. 26(b)(1). Even when relevant, discovery may not be
5 taken to annoy, embarrass or oppress a person, or cause him undue burden or expense. Fed. R.
6 Civ. P. 26(c). The Court has the discretion to “reasonably control discovery . . . to prevent
7 fruitless fishing expeditions with little promise of success.” *Blackie v. Barrack*, 524 F.2d 891,
8 906 n.22 (9th Cir. 1975). The Court’s exercise of such control is particularly appropriate with
9 respect to the overbroad, irrelevant and intrusive discovery that Questcor seeks here.

10 First, Questcor’s Interrogatory Nos. 1 and 3, which are directed at lead counsel’s pre-
11 filing investigation, seek to strip away the protections afforded litigants by the work product
12 doctrine by forcing Plaintiffs to reveal the sources of information on which certain of the
13 Complaint’s allegations were based. Who counsel interviewed and decided to rely on and the
14 importance placed on the various sources of information is classic work product for which
15 Questcor has not demonstrated a substantial need or faces an undue hardship in obtaining. By
16 providing Questcor with detailed and categorized Lead Plaintiffs’ Initial Disclosures Pursuant
17 to Federal Rule of Civil Procedure 26(a)(1) (“Initial Disclosures”) that include each fact
18 witness who provided information on which Plaintiffs relied in drafting the Complaint,
19 Plaintiffs have satisfied their discovery obligations. *See* Luedeke Decl., Ex. B.

20 Second, Questcor’s Request Nos. 1-10 regarding Plaintiffs’ investment history in
21 Questcor securities seek irrelevant information and impose an undue burden on class members
22 seeking appointment as representative claimants. “Courts have repeatedly rejected the
23 argument that a plaintiff’s post-class period transactions in a defendant company’s securities
24 are inconsistent with a claim of fraud or raise questions as to the plaintiff’s adequacy and
25 typicality.” *McGuire v. Dendreon Corp.*, No. C07-800MJP, 2008 U.S. Dist. LEXIS 14713, at
26 *7 (W.D. Wash. Feb. 13, 2008). In fact, purchases after full disclosure “may well make sound
27 economic sense in an efficient market because the market reflects news of any corrective
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disclosures in the stock price, typically lowering the stock price.” *In re Computer Sci. Corp. Sec. Litig.*, 288 F.R.D. 112, 124 (E.D. Va. 2012). Accordingly, the relevant time period for Plaintiffs’ transactions in Questcor securities is limited to the Class Period.

Third, as with Interrogatory Nos. 1 and 3, Questcor’s Request Nos. 23-27 and 33 are directed at Plaintiffs’ counsel’s legal analysis concerning their allegations in the Complaint, counsel’s opinion on Plaintiffs’ merits on class certification, and/or call for expert opinion. As such, these materials are generally subject to work product protection. Plaintiffs believe any responsive materials not qualifying as work product are either already, or soon to be, within Questcor’s possession or easily attainable by Questcor. *See Torres v. Goddard*, No. CV 06-2482-PHX-SMM, 2010 U.S. Dist. LEXIS 87621, at *18 (D. Ariz. July 30, 2010); *Baldoni v. UNUMProvident*, No. CV 03-1381-AS, 2007 U.S. Dist. LEXIS 14127, at *21-*23 (D. Or. Feb. 26, 2007).

Despite the irrelevance of and protections afforded the materials sought by Questcor, Plaintiffs have been very accommodating. Indeed, Plaintiffs openly conferred with Questcor, attempted to clarify their objections to Questcor’s Interrogatories and Requests, and provided Questcor with authority in support of their objections. Moreover, Plaintiffs made several attempts to reach a compromise with Questcor over its discovery. Questcor’s refusal to seek an informal resolution prior to filing its Motion and its utter silence in response to Plaintiffs’ offers to compromise led to Questcor’s lengthy Motion, not any unjustified objections, unreasonableness, or feet-dragging by Plaintiffs.

In light of the substantial weight of authority supporting Plaintiffs’ objections to each of the Interrogatories and Requests identified by Questcor as disputed, Questcor’s Motion should be denied in its entirety.

III. Questcor’s Motion to Compel Further Responses to Interrogatories

A. Interrogatories at Issue and Responses

Interrogatory 1

IDENTIFY ALL PERSONS with whom YOU, or YOUR counsel, have

1 COMMUNICATED CONCERNING the CAC or the allegations in the CAC.

2 **Plaintiffs' Responses and Objections**

3 Lead Plaintiff incorporates each of the foregoing General Objections as set forth
4 herein. Lead Plaintiff further objects to the Interrogatory to the extent it seeks
5 information protected by the attorney-client privilege, the attorney work-product doctrine
6 or any other applicable privilege or protection. Moreover, Lead Plaintiff objects to this
7 Interrogatory as it is compound. Subject to and without waiving the foregoing objections,
8 Lead Plaintiff responds as follows:

9 Lead Plaintiff has conferred with its counsel. Lead Plaintiff refers to Defendant
10 those individuals and entities identified in Lead Plaintiffs' Initial Disclosures pursuant to
11 Federal Rule of Civil Procedure 26(a)(1), dated February 3, 2014. Lead Counsel
12 additionally has communicated with various third parties from which it has subpoenaed
13 documents as identified on Lead Plaintiffs' Notice(s) of Request for Production of
14 Documents to Non-Parties, dated February 19, 2014 and February 20, 2014.

15 **Interrogatory 3**

16 IDENTIFY ALL unidentified sources for allegations in the CAC, including, but
17 not limited to, the sources of ALL allegations in paragraphs 41-43 and 46-49.

18 **Plaintiffs' Responses and Objections**

19 Lead Plaintiff incorporates each of the foregoing General Objections as set forth
20 herein. Plaintiff further objects to this Interrogatory as vague, overly broad, and unduly
21 burdensome. Moreover, Lead Plaintiff objects to this Interrogatory to the extent it seeks
22 information protected by the attorney-client privilege, the attorney work-product doctrine,
23 the common interest privilege, and/or any other applicable privilege or protection.
24 Plaintiff additionally objects to this Interrogatory on the grounds that it seeks information
25 that is publicly available or equally available to Defendant.

26 Subject to and without waiving the foregoing objections, Lead Plaintiff responds as
27 follows:

1 Plaintiff refers Defendant to Lead Plaintiffs' Initial Disclosures pursuant to Federal
2 Rule of Civil Procedure 26(a)(1), dated February 3, 2014, which include the names and
3 contact information for potential witnesses known to Lead Plaintiff. Additional
4 allegations were based upon information gathered from public sources, including an
5 article published by *TheStreetSweeper.org*, dated January 27, 2012 and entitled
6 "Questcor: The Secret behind Its 'Miracle' Drug," and sources cited therein.

7 **B. Questcor's Argument**

8 Interrogatories 1 and 3 request Plaintiffs identify any persons or entities that
9 provided any information concerning the allegations in the Complaint or with whom
10 Plaintiffs communicated concerning the Complaint. Plaintiffs have refused to do so,
11 instead arguing Questcor is not entitled to this information and that Plaintiffs have
12 satisfied their obligations under Federal Rule 33 by simply referring to the list of over
13 150 *potential* witnesses identified in Plaintiffs' initial disclosures. Plaintiffs are wrong on
14 both fronts.

15 First, Plaintiffs incorrectly assert that the attorney work-product doctrine protects
16 them from disclosing the identity of witnesses they have spoken to and/or have provided
17 information to support the claims alleged in the Complaint. Rather, "[c]ourts generally
18 approve of" "interrogatories seeking the identity of witnesses or documents" in support of
19 the responding party's claims, "whether early or late in a case," and thus have
20 consistently rejected the attorney work-product doctrine as a protection against
21 "identification interrogatories." Kolker, 2011 WL 5057094, at *6;⁵ In re Harmonic, Inc.
22 Sec. Litig., 245 F.R.D. 424, 427-28 (N.D. Cal. 2007) ("The issue here ... is not *if* the
23 [witnesses'] identities will ever be discovered, but rather *when* they will be discovered,"
24 and thus "the only effect" of withholding identities "is to force the Defendants to expend
25 resources on taking the depositions of 77 people [identified in plaintiffs' initial

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27 ⁵ All emphasis and alterations are added and internal citations and quotations omitted unless
28 indicated.

disclosures] in order to obtain the information. Because the information will inevitably be disclosed and the earlier disclosure does not compromise [p]laintiffs' strategic or tactical position, there is no basis for finding work product protection.") (emphasis in original); In re Convergent, 108 F.R.D. at 340-41 ("There is no reason plaintiffs should not identify ... any witnesses whom plaintiffs know have information that supports or contradicts any of the controverted allegations in plaintiffs Consolidated Amended Complaint. The court hereby orders plaintiffs to identify such persons for defendants within thirty days of the date this order is filed."); McNamara v. Erschen, 8 F.R.D. 427, 429 (D. Del. 1948) (distinguishing between an interrogatory "seeking only the identity of persons known to the plaintiff in connection with those allegations of the complaint" and "the subsequent mental determination of what precise witnesses are best available to prove a relevant fact ...," especially when such identity is requested at an early stage of the litigation).⁶

In Kolker, the defendant propounded fifteen interrogatories that sought the identification of "all witnesses and documents that support" specific allegations made by plaintiff. Kolker, 2011 WL 5057094, at *5. Plaintiffs contended that the attorney work-product doctrine protected the requested disclosure. The Kolker court explicitly rejected this argument, holding that plaintiff "cannot claim a privilege over the identity or description of witnesses or documents that may be used to support [his] allegations." Id. at *6. Noting that defendant "has not requested a summary or even identification of 'interviews, statements, memoranda, correspondence, briefs, mental impressions,'" the court held that seeking the identity of witnesses "do[es] not go so far as to require disclosure of counsel's work-product." Id. Here, Plaintiffs' unsupported assertion of the

⁶ The permissibility of identification interrogatories are borne from the notion that "[m]utual knowledge of the relevant facts is essential to proper litigation. Either party may compel the other to disclose what relevant facts he has in his possession." Sargent-Welch Scientific Co. v. Ventron Corp., 59 F.R.D. 500, 503 (N.D. Ill. 1973).

1 attorney work-product is unavailing and does not relieve them of their duties to provide
2 the information sought in Interrogatories 1 and 3.

3 Second, Plaintiffs contend they have satisfied their obligations by merely referring
4 to their initial disclosures which, pursuant to Federal Rule 26 governing initial
5 disclosures, listed over 150 individuals “*likely* to have discoverable information.” Fed. R.
6 Civ. Proc. 26(a)(1)(A)(i). Not so. Under Federal Rule 33(b)(1), governing responses to
7 interrogatories, “[i]t is technically improper and unresponsive for an answer to an
8 interrogatory to refer to outside material,” such as pleadings and initial disclosures.
9 Equal Rights Center, 246 F.R.D. at 35; DIRECTV, Inc. v. Puccinelli, 224 F.R.D. 677,
10 680-81 (D. Kan. 2004) (plaintiff’s answer to interrogatory referring to complaint and
11 initial disclosures insufficient, holding a “Plaintiff may not merely refer Defendants to
12 other pleadings or its disclosures hoping that Defendants will be able to glean the
13 requested information from them”); Davis v. City of Springfield, Ill., 2009 WL 268893,
14 at *5 (C.D. Ill. Jan. 30, 2009) (party “erred in referring to [its initial disclosures]
15 generally in its response to” interrogatories). Thus, courts have held that a responding
16 party’s reference to potential witnesses identified in the responding party’s initial
17 disclosures is an insufficient response to an interrogatory that seeks the identity of
18 individuals or entities that the responding party did in fact communicate with or whom
19 form the basis of specific allegations or claims made by the responding party. See
20 Kolker, 2011 WL 5057094, at *5; see also Smith v. Cafe Asia, 256 F.R.D. 247, 253
21 (D.D.C. 2009) (referring to initial disclosure list that “may have discoverable
22 information,” insufficient response to interrogatory seeking identity and description of all
23 party’s communications “related to any allegation in Plaintiff’s Complaint or Defendant’s
24 Answer”).

25 In Smith, plaintiff propounded an interrogatory requesting defendant to identify
26 and describe any communication it had “related to any allegation in [p]laintiff’s
27 complaint or [d]efendant’s answer.” Smith, 256 F.R.D. at 253. Defendants responded to
28

1 the interrogatory by simply referring to its initial disclosures, and plaintiff moved to
2 compel further response. The court granted the motion, noting that Federal Rule Civil
3 Procedure 26(a)(1)(A) requires initial disclosures to include information on “each
4 individual likely to have discoverable information, not on each person who had a
5 communication that was related to any allegation in [p]laintiff’s complaint or
6 [d]efendant’s answer.” Id. The court held that plaintiff’s interrogatory “does not ask for
7 the identical list of persons that are included in defendant’s initial disclosures. ... Thus,
8 referring to the initial disclosure list of persons may be overbroad and, therefore,
9 defendant must specifically indicate the persons who had a communication regarding any
10 allegations.” Id.⁷

11 Just as in Smith, Interrogatories 1 and 3 do not ask Plaintiffs to list all individuals
12 or entities that may become witnesses in this case, as Plaintiffs were required to identify
13 in their initial disclosures. Instead, the Interrogatories request Plaintiffs to identify (i) all
14 persons Plaintiffs have in fact communicated with concerning any allegation in the
15 Complaint and (ii) the sources that support Plaintiffs’ specific allegations in paragraphs
16 41-43 and 46-49. Thus, just as in Smith, Plaintiffs’ simple reference to “the initial
17 disclosure list of persons may be overbroad” and inadequate. Smith, 256 F.R.D. at 253.
18 The Court should compel Plaintiffs to “specifically indicate the persons who [Plaintiffs]
19 had a communication regarding any allegations,” and/or provided information in support
20 of those allegations. Id.

21 C. Plaintiffs’ Argument

22 The identities of the witnesses Plaintiffs’ counsel interviewed and decided to rely
23 on and the importance placed on the various sources of information are classic work

24
25 ⁷ See also Kolker, 2011 WL 5057094, at *6 (distinguishing initial disclosures from an
26 interrogatory seeking identity of witnesses that support specific party claims, finding “the
27 federal rules require parties in their initial disclosures to provide the identity of individuals,
28 as well as copies or descriptions of documents, that they may use to support [their] claims or
defenses. The rules do not require parties to specify which individuals or documents may be
used for specific or particularized elements or aspect of their claims.”)

1 product. *See MTI II*, 2002 U.S. Dist. LEXIS 13015, at *7-*10. In their Initial
2 Disclosures, Plaintiffs identified all of the fact witnesses, including those relied upon in
3 the Complaint, from whom Plaintiffs may elicit testimony as this case moves forward.⁸
4 Nonetheless, Questcor seeks to compel Plaintiffs to reveal their investigatory efforts over
5 the last two years by requiring that Plaintiffs identify each witness Plaintiffs relied upon
6 in the Complaint.

7 The Supreme Court's seminal decision in *Hickman v. Taylor*, 329 U.S. 495, 67 S.
8 Ct. 385, 91 L. Ed. 451 (1947), explains the rationale behind the work product doctrine:

9 [I]t is essential that a lawyer work with a certain degree of
10 privacy, free from unnecessary intrusion by opposing parties
11 and their counsel. Proper preparation of a client's case
12 demands that he assemble information, sift what he considers to
13 be the relevant from the irrelevant facts, prepare his legal
14 theories and plan his strategy without undue and needless
15 interference. That is the historical and the necessary way in
16 which lawyers act within the framework of our system of
17 jurisprudence to promote justice and to protect their clients'
18 interests. This work is reflected, of course, in
19 interviews, . . . mental impressions, personal beliefs, and
20 countless other tangible and intangible ways

21 *Id.* at 510-11; *see also Admiral Ins. Co. v. United States Dist. Court*, 881 F.2d 1486, 1494
22 (9th Cir. 1989). Furthermore, in *Upjohn Co. v. United States*, 449 U.S. 383, 101 S. Ct.
23 677, 66 L. Ed. 2d 584 (1981), the Supreme Court proclaimed that "[d]iscovery was
24 hardly intended to enable a learned profession to perform its functions . . . on wits
25 borrowed from the adversary.'" *Id.* at 396 (citation omitted). Thus, while the identity of

26 _____
27 ⁸ Pursuant to the Scheduling and Case Management Order Re Jury Trial, the Initial
28 Expert Disclosure & Report Deadline is not until January 13, 2015. Milstead Decl., Ex. 8.

1 persons with knowledge has often been requested in discovery and found to be within the
2 scope of discoverable information, the identities of witnesses contacted by opposing
3 counsel have consistently been protected. *See In re Gupta Corp. Sec. Litig.*, No. C-94-
4 1517 FMS, 1995 U.S. Dist. LEXIS 21847, at *3-*5 (N.D. Cal. July 18, 1995) (clarifying
5 his rationale in *In re Convergent Techs. Sec. Litig.*, 108 F.R.D. 328 (N.D. Cal. 1985), a
6 matter he decided ten years earlier and on which Questcor relies here, Magistrate Judge
7 Brazil sanctioned defendants for bringing a motion seeking to compel interrogatory
8 responses because the “interrogatories do not ask for the identity of persons with
9 knowledge; they ask for the identity of each person contacted by plaintiffs’ counsel”).
10 Part of the rationale behind this distinction is that if the identity of interviewed witnesses
11 is disclosed, opposing counsel can infer which witnesses counsel considers important,
12 revealing mental impressions and trial strategy.

13 Courts in the Ninth Circuit have routinely rejected attempts to obtain discovery
14 similar to that sought by Questcor through Interrogatory Nos. 1 and 3. *See, e.g., MTI II*,
15 2002 U.S. Dist. LEXIS 13015, at *10 (“This Court finds that the identity of the former
16 employees mentioned in the [complaint] includes work product content. This finding is
17 made in light of the established law concluding that there is work product in the identity
18 of witnesses interviewed or otherwise relied upon by plaintiffs.”); *Local 703 v. Regions*
19 *Fin. Corp.*, No. 12cv1561 H (NLS), 2012 U.S. Dist. LEXIS 130002, at *9-*10 (S.D. Cal.
20 Sept. 11, 2012) (collecting cases) (“[e]ven if Defendants ultimately only seek the names
21 and contact information of the witnesses contacted, that information is protected as work
22 product”); *In re Ashworth Sec. Litig.*, 213 F.R.D. 385, 386-90 (S.D. Cal. 2002) (denying
23 motion to compel confidential witness (“CW”) identities because such information
24 ““would necessarily reveal counsel’s opinions regarding the relative importance of these
25 witnesses, the highlights of their testimony/factual knowledge, and would link any future
26 statements by the witnesses with plaintiff’s counsel’s legal theories and conclusions as
27 outlined in the complaint””) (citation omitted); *Gen-Probe Inc. v. Becton*, No. 09cv2319

1 BEN (NLS), 2011 U.S. Dist. LEXIS 27961, at *6-*7 (S.D. Cal. Mar. 18, 2011)
2 (following *Ashworth* and *MTI II*).⁹

3 The only applicable Ninth Circuit district court authority relied upon by Questcor
4 prior to the filing of its Motion is easily distinguished and, in fact, accepts that “[t]here is
5 no binding precedent as to whether disclosure of the mere identity of a CW at this
6 juncture is protected work product. Neither the Supreme Court nor the Ninth Circuit has
7 opined on the matter. As to those courts that have addressed the issue, some have held
8 that the identities are privileged; other courts have held they are not.” *In re Harmonic,*
9 *Inc. Sec. Litig.*, 245 F.R.D. 424, 427 (N.D. Cal. 2007); *see also In re Connetics Corp. Sec.*
10 *Litig.*, No. C 07-02940 SI, 2009 U.S. Dist. LEXIS 129508, at *4-*5 (N.D. Cal. Apr. 27,
11 2009) (same); Milstead Decl., Ex. 1 at 3 (citing *Harmonic*, 245 F.R.D. 424 and *Connetics*,
12 2009 U.S. Dist. LEXIS 129508).

13 Importantly, the *Harmonic* and *Connetics* courts noted that their decisions
14 compelling identification of confidential witnesses turned on, among other things, the
15 fact that plaintiffs “reveal[ed] which witness statements they evaluated as being
16 important by attributing statements to particular witnesses in the [complaint].” *Connetics*,
17 2009 U.S. Dist. LEXIS 129508, at *7; *Harmonic*, 245 F.R.D. at 428 (“Plaintiffs have
18 already revealed their legal strategy by including the CWs’ statements in the [complaint]”
19 and “provided substantial indicators as to who the CWs are”). In the Complaint,
20 Plaintiffs here do not quote or otherwise attribute statements by particular witnesses or
21 identify CWs. Instead, Plaintiffs’ counsel generally relied on information obtained
22

23 ⁹ See also, e.g., *Gov’t Benefits Analysts, Inc. v. Gradient Ins. Brokerage, Inc.*, No. 10-
24 2558-KHV-DJW, 2012 U.S. Dist. LEXIS 113223, at *21 (D. Kan. Aug. 13, 2012); *In re*
25 *SLM Corp. Sec. Litig.*, No. 08 Civ. 1029 (WHP), 2011 U.S. Dist. LEXIS 16893, at *1-*2
26 (S.D.N.Y. Feb. 15, 2011); *In re Veeco Instruments, Inc. Sec. Litig.*, No. 05 MD 1695
27 (CM) (GAY), 2007 U.S. Dist. LEXIS 5969, at *3-*4 (S.D.N.Y. Jan. 26, 2007) (same); *In*
28 *re St. Paul Travelers Sec. Litig. II*, No. 04-4697 (JRT/FLN), 2007 U.S. Dist. LEXIS
34527, at *5-*7 (D. Minn. May 10, 2007); *Elec. Data Sys. Corp. v. Steingraber*, No. 4:02
CV 225, 2003 U.S. Dist. LEXIS 11818, at *3 (E.D. Tex. July 9, 2003); *Massachusetts v.*
First Nat’l Supermarkets, Inc., 112 F.R.D. 149, 150 (D. Mass. 1986).

1 during their investigation prior to drafting the Complaint.¹⁰

2 The protection over the disclosure of witnesses that is afforded Plaintiffs by the
3 work product doctrine can only be breached by Questcor upon a showing that it has a
4 “substantial need of the materials” and “cannot, without undue hardship, obtain their
5 substantial equivalent by other means.” Fed. R. Civ. P. 26(b)(3)(A)(ii). Questcor has
6 made no such showing.

7 Indeed, the only burden Questcor raises is having to conduct its own investigation
8 of the allegations in the Complaint. However, Questcor is in the best position to know
9 what type of information each witness possesses. *See MTI II*, 2002 U.S. Dist. LEXIS
10 13015, at *13 (recognizing no hardship exists where witnesses identified in Rule 26
11 disclosures consisted primarily of defendant’s current and former employees, because
12 defendants “are in the best position to know what type of information each individual
13 may possess”); *Ashworth*, 213 F.R.D. at 389 (same). Consistent with Rule 26, Plaintiffs
14 served Questcor with their Initial Disclosures identifying persons likely to have
15 discoverable information that Plaintiffs may use to support their claims. *See Luedeke*
16 *Decl.*, Ex. B. Plaintiffs’ thorough Initial Disclosures consist of 163 individuals and
17 entities, largely as a result of Plaintiffs’ counsel’s diligent investigation and ongoing
18 development of this case.¹¹ *Id.* For convenience sake, however, Plaintiffs took the

20 ¹⁰ Notably, the *Harmonic* court made clear that a “broad request” analogous to
21 Interrogatory No. 1 seeking “a list of ‘all persons that [were] interviewed during the
22 course of the investigation’ . . . would undoubtedly provide insight into counsel’s thought
processes during preparation for litigation” and intrude upon work product. 245 F.R.D.
at 428 (citation omitted).

23 ¹¹ Questcor points to no binding Ninth Circuit precedent to support its position that it is
24 improper to point to extrinsic documents such as initial disclosures in interrogatory
25 responses. Persuasive authority on the issue appears to be unsettled. *See, e.g., Wheeler v.*
26 *Blackbear Two, LLC*, No. 6:12-cv-583-ORL-37TBS, 2012 U.S. Dist. LEXIS 170374, at
27 *5-*6 (M.D. Fla. Nov. 30, 2012); *SLM*, 2011 U.S. Dist. LEXIS 16893, at *1-*3;
28 *Stoltenberg v. Unum Life Ins. Co. of Am.*, No. 8:04CV288, 2005 U.S. Dist. LEXIS 48393,
at *12-*13 (D. Neb. Dec. 12, 2005). Questcor also provides no compelling reason why
pointing to extrinsic documents that it has access to should be deemed an insufficient
response.

1 liberty of dividing the list into seven subgroupings based on the affiliation of the
2 individual or entity listed. *Id.* The largest subgroup – consisting of 111 names – consists
3 of current or former Questcor employees, contractors and associated physicians.¹² As
4 Questcor is aware or should be able to quickly determine, any witness that it has
5 requested that Plaintiffs identify is almost certainly to be contained within this
6 subgroup.¹³ Accordingly, Questcor faces no undue hardship. *See MTI II*, 2002 U.S. Dist.
7 LEXIS 13015, at *13 (rejecting the reasoning in *In re Aetna Inc. Sec. Litig.*, No. MDL
8 1219, 1999 U.S. Dist. LEXIS 8038 (E.D. Pa. June 1, 1999) (*see* Milstead Decl., Ex. 1 at
9 3), and finding that although the list of 750 individual names provided by the Aetna
10 plaintiffs may have been “unmanageable,” a list of 71 individuals would not cause
11 defendants undue hardship); *Ashworth*, 213 F.R.D. at 390 (100 potential witnesses will
12 not cause defendant undue hardship); *SLM*, 2011 U.S. Dist. LEXIS 16893, at *1-*2 (no
13 undue hardship “in conducting an investigation of the 73 former employees listed in
14 Plaintiffs’ initial disclosures”). Questcor should be required to do its own work and
15 interview persons from this subgroup – many of which are also contained within
16 Questcor’s initial disclosures – as they see fit, rather than cutting corners by asking
17 Plaintiffs to reveal who they believe to be the best witnesses. *See Sporck v. Peil*, 759
18 F.2d 312, 316 (3d Cir. 1985) (noting that it is in the best interest of the adversary system
19 “that each side relies on its own wit in preparing their respective cases”).

20 Accordingly, the Court should deny Questcor’s Motion with respect to
21 Interrogatory Nos. 1 and 3.

22
23 ¹² The other subgroups principally consist of the names of plaintiffs, defendants, auditors
24 and advisors, analysts and media, government agencies, and other witnesses (primarily
healthcare providers and several non-Questcor-affiliated doctors). Luedeke Decl., Ex. B.

25 ¹³ The allegations contained in Complaint paragraphs 41-43 and 46-49, the sources of
26 which Questcor requests Plaintiffs identify through Interrogatory No. 3, relate primarily
27 to general Company practices, including Questcor’s use of paid consultants to promote
Athar and the composition and frequency of Company meetings. From this list,
Questcor, in a much better position than Plaintiffs to know what type of knowledge these
individuals possess, can glean the sources of the information it seeks with limited effort.

1 **IV. Questcor's Motion to Compel Production of Documents**

2 **A. Requests for Production 1-10**

3 **1. Requests and Responses at Issue**

4 **Document Request 1**

5 ALL DOCUMENTS CONCERNING YOUR current ownership of QUESTCOR
6 SECURITIES.

7 **Plaintiffs' Responses and Objections**

8 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
9 Plaintiff objects to this Request as unduly burdensome and overly broad to the extent it
10 calls for the production of documents not within Lead Plaintiff's possession, custody or
11 control, documents that can be found in the public domain or documents that can be
12 found in the pleadings or factual record in this action. In addition, Lead Plaintiff objects
13 to this Request on privacy grounds to the extent that it seeks or requires disclosure of
14 information which is protected from disclosure by the attorney-client privilege, the
15 attorney work-product doctrine, and/or any other applicable privilege or immunity. Lead
16 Plaintiff further objects to this Request to the extent it seeks information that is neither
17 relevant nor likely to lead to the discovery of admissible evidence.

18 **Document Request 2**

19 ALL DOCUMENTS CONCERNING YOUR history of ownership of
20 QUESTCOR SECURITIES.

21 **Plaintiffs' Responses and Objections**

22 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
23 Plaintiff objects to this Request as unduly burdensome and overly broad to the extent it
24 calls for the production of documents not within Lead Plaintiff's possession, custody or
25 control, documents that can be found in the public domain or documents that can be
26 found in the pleadings or factual record in this action. Lead Plaintiff also objects to this
27 Request to the extent no relevant time period is indicated as it extends the scope of
28

1 discovery to include information that is neither relevant nor likely to lead to the discovery
2 of admissible evidence. In addition, Lead Plaintiff objects to this Request on privacy
3 grounds to the extent that it seeks or require disclosure of information which is protected
4 from disclosure by the attorney-client privilege, the attorney work-product doctrine,
5 and/or any other applicable privilege or immunity.

6 Subject to and without waiving the foregoing objections, for the time period April
7 4, 2011 through September 21, 2012, Lead Plaintiff will produce responsive, relevant,
8 non-privileged documents to the extent such documents exist and are in its possession,
9 custody or control.

10 **Document Request 3**

11 ALL DOCUMENTS CONCERNING YOUR reasons for acquiring QUESTCOR
12 SECURITIES.

13 **Plaintiffs' Responses and Objections**

14 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
15 Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly
16 broad in its use of "reasons" and "acquiring." Lead Plaintiff further objects to this
17 Request to the extent it calls for the production of documents not within Lead Plaintiff's
18 possession, custody or control. Lead Plaintiff also objects to this Request to the extent no
19 relevant time period is indicated as it extends the scope of discovery to include
20 information that is neither relevant nor likely to lead to the discovery of admissible
21 evidence. In addition, Lead Plaintiff objects to this Request on privacy grounds to the
22 extent that it seeks or require disclosure of information which is protected from
23 disclosure by the attorney-client privilege, the attorney work-product doctrine, and/or any
24 other applicable privilege or immunity.

25 Subject to and without waiving the foregoing objections, for the time period April
26 4, 2011 through September 21, 2012, Lead Plaintiff will produce responsive, relevant,
27 non-privileged documents to the extent such documents exist and are in its possession,
28

1 custody or control.

2 **Document Request 4**

3 ALL DOCUMENTS CONCERNING any and all TRANSACTIONS executed by
4 YOU involving QUESTCOR SECURITIES.

5 **Plaintiffs' Responses and Objections**

6 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
7 Plaintiff objects to this Request as unduly burdensome and overly broad to the extent it
8 calls for the production of documents not within Lead Plaintiff's possession, custody or
9 control, documents that can be found in the public domain or documents that can be
10 found in the pleadings or factual record in this action. Lead Plaintiff also objects to this
11 Request to the extent no relevant time period is indicated as it extends the scope of
12 discovery to include information that is neither relevant nor likely to lead to the discovery
13 of admissible evidence. In addition, Lead Plaintiff objects to this Request on privacy
14 grounds to the extent that it seeks or require disclosure of information which is protected
15 from disclosure by the attorney-client privilege, the attorney work-product doctrine,
16 and/or any other applicable privilege or immunity.

17 Subject to and without waiving the foregoing objections, for the time period April
18 4, 2011 through September 21, 2012, Lead Plaintiff will produce responsive, relevant,
19 non-privileged documents to the extent such documents exist and are in its possession,
20 custody or control.

21 **Document Request 5**

22 ALL DOCUMENTS or COMMUNICATIONS CONCERNING YOUR decision
23 to purchase or sell QUESTCOR SECURITIES, including, but not limited to, ALL
24 DOCUMENTS or COMMUNICATIONS CONCERNING any rationale or investment
25 philosophy underlying YOUR decision to purchase or sell any QUESTCOR
26 SECURITIES.

27 **Plaintiffs' Responses and Objections**

1 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
2 Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly
3 broad in its use of “rationale” and “investment philosophy.” Further, Lead Plaintiff
4 objects to this Request as unduly burdensome and overly broad to the extent it is
5 duplicative of other requests and/or calls for the production of documents not within Lead
6 Plaintiff’s possession, custody or control. Lead Plaintiff further objects to this Request as
7 it seeks irrelevant information and is not reasonably calculated to lead to the discovery of
8 admissible evidence. In addition, Lead Plaintiff objects to this Request on privacy
9 grounds to the extent that it seeks or require disclosure of information which is protected
10 from disclosure by the attorney-client privilege, the attorney work-product doctrine,
11 and/or any other applicable privilege or immunity.

12 Subject to and without waiving the foregoing objections, for the time period April
13 4, 2011 through September 21, 2012, Lead Plaintiff will produce responsive, relevant,
14 non-privileged documents to the extent such documents exist and are in its possession,
15 custody or control.

16 **Document Request 6**

17 ALL DOCUMENTS, COMMUNICATIONS or any other information on which
18 YOU relied, in whole or in part, in making a decision with respect to any actual or
19 contemplated investment in QUESTCOR SECURITIES, whether on YOUR own behalf
20 or on behalf of another person.

21 **Plaintiffs’ Responses and Objections**

22 Lead Plaintiff incorporates herein each of the foregoing General Objections.
23 Further, Lead Plaintiff objects to this Request as unduly burdensome and overly broad to
24 the extent it is duplicative of other requests and/or calls for the production of documents
25 not within Lead Plaintiff’s possession, custody or control. Lead Plaintiff also objects to
26 this Request to the extent no relevant time period is indicated as it extends the scope of
27 discovery to include information that is neither relevant nor likely to lead to the discovery
28

1 of admissible evidence. In addition, Lead Plaintiff objects to this Request on privacy
2 grounds to the extent that it seeks or require disclosure of information which is protected
3 from disclosure by the attorney-client privilege, the attorney work-product doctrine,
4 and/or any other applicable privilege or immunity.

5 Subject to and without waiving the foregoing objections, for the time period April
6 4, 2011 through September 21, 2012, Lead Plaintiff will produce responsive, relevant,
7 non-privileged documents to the extent such documents exist and are in its possession,
8 custody or control.

9 **Document Request 7**

10 ALL DOCUMENTS, COMMUNICATIONS the due diligence, if any, YOU or
11 any person or entity acting on YOUR behalf or for YOUR benefit performed prior to
12 investing in QUESTCOR SECURITIES.

13 **Plaintiffs' Responses and Objections**

14 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
15 Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly
16 broad in its use of "due diligence," "benefit" and "performed." Further, Lead Plaintiff
17 objects to this Request as unduly burdensome and overly broad to the extent it calls for
18 the production of documents not within Lead Plaintiff's possession, custody or control.
19 Lead Plaintiff also objects to this Request to the extent no relevant time period is
20 indicated as it extends the scope of discovery to include information that is neither
21 relevant nor likely to lead to the discovery of admissible evidence. In addition, Lead
22 Plaintiff objects to this Request on privacy grounds to the extent that it seeks or require
23 disclosure of information which is protected from disclosure by the attorney-client
24 privilege, the attorney work-product doctrine, and/or any other applicable privilege or
25 immunity.

26 Subject to and without waiving the foregoing objections, for the time period April
27 4, 2011 through September 21, 2012, Lead Plaintiff will produce responsive, relevant,
28

1 non-privileged documents to the extent such documents exist and are in its possession,
2 custody or control.

3 **Document Request 8**

4 ALL DOCUMENTS and COMMUNICATIONS sufficient to identify YOUR use
5 of the services of an investment advisor, stock broker, or money manager.

6 **Plaintiffs' Responses and Objections**

7 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
8 Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly
9 broad in its use of "identify," "use of" and "services of," and/or as it seeks any
10 communication between Lead Plaintiff and any person. Lead Plaintiff further objects to
11 this Request as it seeks irrelevant information and is not reasonably calculated to lead to
12 the discovery of admissible evidence. Lead Plaintiff also objects to this Request to the
13 extent no relevant time period is indicated as it extends the scope of discovery to include
14 information that is neither relevant nor likely to lead to the discovery of admissible
15 evidence. In addition, Lead Plaintiff objects to this Request on privacy grounds to the
16 extent that it seeks or require disclosure of information which is protected from
17 disclosure by the attorney-client privilege, the attorney work-product doctrine, and/or any
18 other applicable privilege or immunity.

19 Subject to and without waiving the foregoing objections, for the time period April
20 4, 2011 through September 21, 2012, Lead Plaintiff will produce responsive, relevant,
21 non-privileged documents to the extent such documents exist and are in its possession,
22 custody or control.

23 **Document Request 9**

24 DOCUMENTS sufficient to identify any and ALL brokerage or advisory accounts
25 in which YOU hold investments.

26 **Plaintiffs' Responses and Objections**

27 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
28

1 Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly
2 broad in its use of “identify” without any reasonable limitation in scope and/or to the
3 extent it is duplicative of other requests and/or calls for the production of documents not
4 within Lead Plaintiff’s possession, custody or control. Lead Plaintiff further objects to
5 this Request as it seeks irrelevant information and is not reasonably calculated to lead to
6 the discovery of admissible evidence. Lead Plaintiff also objects to this Request to the
7 extent no relevant time period is indicated as it extends the scope of discovery to include
8 information that is neither relevant nor likely to lead to the discovery of admissible
9 evidence. In addition, Lead Plaintiff objects to this Request on privacy grounds to the
10 extent that it seeks or require disclosure of information which is protected from
11 disclosure by the attorney-client privilege, the attorney work-product doctrine, and/or any
12 other applicable privilege or immunity.

13 Subject to and without waiving the foregoing objections, for the time period April
14 4, 2011 through September 21, 2012, Lead Plaintiff will produce responsive, relevant,
15 non-privileged documents to the extent such documents exist and are in its possession,
16 custody or control.

17 **Document Request 10**

18 ALL DOCUMENTS CONCERNING the performance of YOUR investment in
19 QUESTCOR SECURITIES.

20 **Plaintiffs’ Responses and Objections**

21 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
22 Plaintiff objects to this Request to the extent it is irrelevant and not reasonably calculated
23 to lead to the discovery of admissible evidence. Lead Plaintiff further objects to this
24 Request as unduly burdensome to the extent it seeks documents that are in the public
25 domain. Lead Plaintiff also objects to this Request to the extent no relevant time period
26 is indicated as it extends the scope of discovery to include information that is neither
27 relevant nor likely to lead to the discovery of admissible evidence. In addition, Lead
28

1 Plaintiff objects to this Request on privacy grounds to the extent that it seeks or require
2 disclosure of information which is protected from disclosure by the attorney-client
3 privilege, the attorney work-product doctrine, and/or any other applicable privilege or
4 immunity.

5 Subject to and without waiving the foregoing objections, for the time period April
6 4, 2011 through September 21, 2012, Lead Plaintiff will produce responsive, relevant,
7 non-privileged documents to the extent such documents exist and are in its possession,
8 custody or control.

9 **2. Questcor's Argument**

10 Document Requests 1-10 seek various documents concerning Plaintiffs'
11 investment history in Questcor securities, including but not limited to, Plaintiffs' current
12 ownership of Questcor securities, history of ownership of Questcor securities, Plaintiffs'
13 reasons or rationale for acquiring or selling Questcor securities, and the information
14 Plaintiffs or their investment advisors relied upon when making transactions involving
15 Questcor securities. Plaintiffs seek to limit the temporal scope of Requests 2-10 to the
16 putative Class Period and refuse to produce any documents responsive to Request 1,
17 asserting that Plaintiffs' post-Class Period investment history in Questcor securities is
18 irrelevant to the merits of the case or issues of class certification. It has now been *four*
19 *months* since Questcor propounded discovery and Questcor must begin preparing its
20 opposition to class certification on August 4, 2014, without a substantial production of
21 documents from Plaintiffs.¹⁴ The Court should compel production of documents in
22 response to these requests in their entirety within two weeks of the entry of the order

23 _____
24 ¹⁴ Indeed, for the period of time for which Plaintiffs have no objection whatsoever, only
25 one of the three Lead Plaintiffs has produced a handful of documents partially responsive
26 to these requests. Plaintiff West Virginia Investment Management Board produced 84
27 documents from its financial advisor, largely consisting of periodic reviews of the stock
28 markets as a whole and West Virginia Management Board's overall investment portfolio.
Questcor believes such documents may be partially responsive to Document Requests 2,
7, 8, and 9 at best. (Milstead Decl. ¶ 15.)

1 compelling production.

2 Under Federal Rule of Civil Procedure 26(b)(1), “[r]elevancy is broadly construed,
3 and a request for discovery should be considered relevant if there is any possibility that
4 the information sought may be relevant to the claim or defense of any party. A request
5 for discovery should be allowed unless it is clear that the information sought can have no
6 possible bearing on the claim or defense of a party.” In re Toys “R” Us-Delaware, Inc.
7 Fair & Accurate Credit Transactions Act (FACTA) Litig., 2010 WL 4942645, at *1 (C.D.
8 Cal. July 29, 2010). The burden is on Plaintiffs to demonstrate lack of relevance. See
9 First United Methodist Church v. Atl. Mut. Ins. Co., 1995 WL 566026, at *2 (N.D. Cal.
10 Sept. 19, 1995) (“Under the liberal Federal rules the party attempting to avoid discovery
11 needs to carry a heavy burden demonstrating why discovery should be denied.”).

12 In purported federal securities class actions, courts have compelled the production
13 of documents concerning the lead plaintiff’s pre- and post-class period investment history,
14 finding that such documents are relevant to class certification issues and the underlying
15 merits of a securities action. See Feldman, 1992 WL 137163, at *2 (compelling
16 production of Plaintiffs’ pre- and post-Class Period investment history). In re ML-Lee
17 Acquisition Fund II, L.P., 149 F.R.D. 506, 508 (D. Del. 1993) (compelling production of
18 documents “concerning Plaintiffs’ investment history since [22 months before class
19 period]” as “relevant to the Court’s determination of whether Plaintiffs satisfy the
20 typicality requirement”); In re SciMed Life Sec. Litig., 1992 WL 413867, at *2 (D. Minn.
21 Nov. 20, 1992) (compelling documents concerning “*complete* information concerning
22 each named Plaintiffs’ purchases and sales of SciMed Securities. It seeks information
23 and documents which are relevant to class certification and the merits of the case”); In re
24 Harcourt Brace Jovanovich, Inc. Sec. Litig., 838 F. Supp. 109, 111, 114 (compelling
25 production of pre- and post-class period investment history as relevant to typicality).
26 Specifically, case law demonstrates that Plaintiffs’ post-Class Period investment history
27 in Questcor securities may undercut Plaintiffs’ showing of reliance, and relatedly, render
28

1 Plaintiff an inadequate class representative for the purposes of class certification.

2 In securities cases where plaintiffs rely on the fraud-on-the-market theory to
3 establish reliance, as Lead Plaintiffs do here (see CAC ¶¶ 120-126, ECF No. 83), courts
4 have held that a plaintiff's post-Class Period investment history may "sever[]" the link
5 "between the alleged misrepresentations of the defendant and the price paid by a plaintiff
6 or his decision to trade at a fair market price" and therefore may "rebut" the fraud-on-the-
7 market presumption of reliance. Rolex Emps. Ret. Trust, 136 F.R.D. at 664 ("The fact
8 that [plaintiff] continued to trade in [defendant's] stock" "after he learned of the alleged
9 misrepresentations of defendants severs the link between the alleged misrepresentations
10 of defendants and the stock purchases made by Schmidt and acts to rebut the presumption
11 that Schmidt relied on the alleged misrepresentations in making his purchases"); In re
12 Safeguard Scientifics, 216 F.R.D. 577, 582 (E.D. Pa. 2003) ("Defendants have shown
13 that Lead Plaintiff Adal increased his holdings in Safeguard stock even after public
14 disclosure of the alleged fraud. Lead Plaintiff Adal would have made – and in fact did –
15 purchase stock regardless of the fraudulent omission. . . . Defendants have presented
16 compelling reason to rebut the reliance presumption."); In re World Access, Inc. Sec.
17 Litig., 310 F. Supp. 2d 1281, 1300 (N.D. Ga. 2004) (presumption severed by evidence
18 showing plaintiff "continued to purchase WAXS stock after he learned of the alleged
19 misrepresentations in early 1999").

20 Likewise, courts have held that evidence showing a lead plaintiff did not rely on
21 the alleged misstatements or on the integrity market, such as its post-Class Period
22 investment history, renders the lead plaintiff "subject to unique defenses" making "class
23 certification ... inappropriate," because the lead plaintiff cannot satisfy Federal Rule
24 23(a)'s typicality requirement. Hanon v. Dataproducts Corp., 976 F.2d 497, 508-09 (9th
25 Cir. 1992); In re Connetics Corp. Sec. Litig., 257 F.R.D. 572, 577 (N.D. Cal. 2009)
26 (collecting cases where "district courts have concluded that post-adverse discloser
27 purchasers cannot be certified as class representatives"); In re Valence Tech. Sec. Litig.,

1 1996 WL 119468, at *5 (N.D. Cal. Mar. 14, 1996) (plaintiffs’ post-class period purchases
2 renders their “positions ... far removed from those of the pre-May 1994 purchasers and
3 thus these plaintiffs are not typical of the class”); In re Cardinal Health, Inc. Sec. Litig.,
4 226 F.R.D. 298, 310 (S.D. Oh. 2005) (finding that where the plaintiff “began buying
5 Cardinal [stock] at almost exactly the same time that Cardinal Health began to disclose
6 publicly the ongoing investigations,” the plaintiff’s “trading patterns will make it
7 susceptible to claims that [it] did not rely on the Defendants’ alleged misrepresentations
8 when purchasing Cardinal stock”); In re World Access, 310 F. Supp. 2d at 1300 (class
9 certification denied where plaintiffs post-class period actions “directly counter the
10 premise upon which the fraud-on-the-market theory is based”).

11 Here, the documents requested by Document Requests 1-10 may reveal that
12 Plaintiffs’ post-Class Period investment history demonstrates, directly or indirectly, that
13 Plaintiffs did not rely on the alleged misrepresentations or the integrity of the market
14 when purchasing Questcor securities during the Class Period. For example, documents
15 may show that (i) Plaintiffs’ trading activity and the price of those trades did not change
16 during and after the Class Period, see Ballan v. Upjohn Co., 159 F.R.D. 473, 481 (W.D.
17 Mich. 1994) (finding the plaintiff atypical where he purchased shares *at the same price*
18 both during and shortly after the class period); (ii) the timing of Plaintiffs’ trading activity
19 around the end of the Class Period render Plaintiffs susceptible to typicality attacks,
20 Cardinal Health, 226 F.R.D. at 310 (finding that where the plaintiff “began buying
21 Cardinal [stock] at almost exactly the same time that Cardinal Health began to disclose
22 publicly the ongoing investigations,” the plaintiff’s “trading patterns will make it
23 susceptible to claims that [it] did not rely on the Defendants’ alleged misrepresentations
24 when purchasing Cardinal stock”); or that (iii) Plaintiffs’ investment decisions remained
25 consistent during and after the Class Period, demonstrating a lack of reliance on the
26 short-term price of Questcor securities, and therefore, the market’s integrity. See
27 Safeguard Scientifics, 216 F.R.D. at 582 (evidence showing plaintiff “typically focus[ed]

1 on technical price movements rather than price” could rebut the fraud-on-the market
2 presumption rendering plaintiff an inadequate class representative); Rolex, 136 F.R.D. at
3 664 (evidence that plaintiff continued buying stock after class period and that plaintiff’s
4 “decision to invest in the stock in [defendants] was based, in part, on his personal belief
5 that the stock represented good value in the long term” undercut showing of reliance); In
6 re Avon Sec. Litig., 1998 WL 834366, at *7 (S.D.N.Y. Nov. 30, 1998) (“where it is
7 evident that a proposed class representative” “did not rely on the allegedly misleading
8 statement or on the integrity of the market, he is subject to unique defenses and therefore
9 an inappropriate class representative”).

10 Moreover, Plaintiffs’ post-Class Period investment in Questcor securities is
11 particularly relevant here where Plaintiffs baselessly assert that Questcor engaged in a
12 fraudulent scheme. (See Pls.’ 7/3/2013 Opp. Mot. Dismiss, at 1-2, ECF No. 105
13 (conceding “plaintiffs do not base their claims on the accuracy of any particular study”
14 but allege “defendants engaged in a scheme” “to manipulate the available science
15 supporting their rapidly growing sales staff”).) Evidence that Plaintiffs continued to
16 invest in Questcor securities even after the alleged “truth” about Questcor came to light
17 undercuts their asserted belief that Questcor engaged in fraud.

18 Thus, documents concerning Plaintiffs’ investment history after the Class Period
19 may produce evidence crucial to Questcor’s defense of class certification and the
20 underlying merits of the action. Questcor must be allowed to conduct discovery to
21 develop those defenses, and Plaintiffs cannot carry their heavy burden of proving such
22 discovery irrelevant or that there is another compelling reason against production.¹⁵ The

23
24 ¹⁵ In their written responses to Requests 1-10, Plaintiffs also objected that production of
25 responsive documents would be unduly burdensome. However, Plaintiffs did not repeat
26 their burden objection in the meet and confer process let alone provide legal support or
27 otherwise demonstrate why documents concerning their post-Class Period investment
28 history in a single company’s securities would be unduly burdensome. In fact, any burden
argument would demonstrate that Plaintiffs’ post-Class Period investment history in
Questcor securities is extensive, thus further cementing the relevance of that history.
Plaintiffs have not attempted to carry their heavy burden of showing that producing post-

(cont’d)

1 Court should compel production of documents responsive to Document Request 1, and
2 should not limit production responsive to Requests 2-10 to documents from the purported
3 Class Period.

4 **3. Plaintiffs' Argument**

5 As a preliminary matter, Request Nos. 2-10 seek information covering an
6 undefined, and seemingly indefinite, period of time. Plaintiffs objected to the unduly
7 burdensome indefinite time period but agreed to produce responsive, relevant, non-
8 privileged documents from the Class Period. In its April 21, 2014 correspondence
9 requesting a meet-and-confer, Questcor sought clarification from Plaintiffs as to their
10 basis for this temporal limitation. *See* Milstead Decl., Ex. 1. Questcor additionally noted
11 its belief that “any transactions in Questcor securities in which Plaintiffs have engaged
12 after the putative class period are relevant to issues of loss and reliance.”¹⁶ *Id.* On June
13 30, 2014, Plaintiffs provided Questcor with authority supporting their position that “[t]he
14 relevant time period for plaintiffs’ purchases and sales of Questcor securities is the Class
15 Period.” *See id.*, Ex. 5 at 2. Questcor responded on July 1, 2014 by declaring that it
16 “believes the meet and confer process is over as to [Request No. 1]” but failed to address
17 Plaintiffs’ proposed temporal limitation with regard to Request Nos. 2-10. *Id.*, Ex. 6.
18 Plaintiffs then reiterated to Questcor that they agreed to produce documents subject to the
19 temporal limitation. *Id.*, Ex. 7. Plaintiffs additionally sought confirmation from Questcor

20
21 *(cont’d from previous page)*

22 Class Period documents in response to Requests 1-10 would be burdensome. *See Mitchell v.*
Felker, 2010 WL 3835765, at *3 (E.D. Cal. Sept. 29, 2005.)

23 ¹⁶ Prior to this Motion, Questcor at no time indicated it contested Plaintiffs’ objection to
24 the production of pre-Class Period transaction records rendering its Motion as to these
25 materials at best premature. *See, e.g.,* Milstead Decl., Ex. 1 at 6 (arguing that “any
26 transactions in Questcor securities in which Plaintiffs have engaged after the putative
27 class period are relevant to issues of loss and reliance”); *id.*, Ex. 2 at 4 (requesting from
28 Plaintiffs legal authority supporting position that “Plaintiffs’ post-Class Period purchases
and sales of Questcor stock are irrelevant to reliance and/or loss causation”). Moreover,
Questcor fails to point to any Ninth Circuit authority or any case decided within the last
20 years in support of its position that Plaintiffs’ pre-Class Period investment history is at
all relevant. This is because it is not.

1 that all outstanding discovery issues concerning Plaintiffs' production had been addressed.
2 *Id.* Plaintiffs accepted Questor's failure to respond to their July 3, 2014 correspondence
3 as, among other things, an acquiescence to Plaintiffs' temporal limitation and accordingly,
4 on July 24, 2014, commenced a rolling production of Plaintiffs' documents, including
5 Class Period documents responsive to some of Request Nos. 2-10. Luedeke Decl., Ex. A.

6 Despite Plaintiffs' agreement to produce and production of Class Period
7 documents responsive to Questcor's Requests 2-10 (*see* Luedeke Decl., Ex. A, C),
8 Questcor apparently believes this to be insufficient. Instead, Questcor claims a need for
9 Plaintiffs' pre- and post-Class Period trading records. These materials, however, are not
10 relevant to the merits of this action or class certification.

11 Largely focusing its efforts on Plaintiffs' post-Class period records, Questcor
12 asserts that these records "may undercut Plaintiffs' showing of reliance, and relatedly,
13 render Plaintiff an inadequate class representative for the purposes of class certification."
14 Questcor is wrong. As the overwhelming weight of authority makes clear, Plaintiffs'
15 investment decisions post-Class Period have no connection to the issue of whether
16 Plaintiffs relied during the Class Period on the statements underlying Defendants' fraud
17 or whether Plaintiffs qualify to serve as class representatives.

18 Evidence of Plaintiffs' post-Class Period Questcor trades would not assist Questcor
19 in attempting to rebut the fraud-on-the-market theory. This presumption of reliance was
20 first explained by the Supreme Court in *Basic Inc. v. Levinson*, 485 U.S. 224, 241, 108 S.
21 Ct. 978, 99 L. Ed. 2d 194 (1988), and was reaffirmed just recently. *Halliburton Co. v.*
22 *Erica P. John Fund, Inc.*, __ U.S. __, 134 S. Ct. 2398, 2401-13, 189 L. Ed. 2d 339 (2014);
23 *see also Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, __U.S.__, 133 S. Ct. 1184, 1192,
24 185 L. Ed. 2d 308 (2013) ("The fraud-on-the-market theory rests on the premise that
25 certain well developed markets are efficient processors of public information. In such
26 markets, the 'market price of shares' will 'reflec[t] all publicly available information.'").
27 In other words, where an efficient market exists, "courts may presume that investors who
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1 traded securities in that market relied on public, material misrepresentations regarding
2 those securities.” *Amgen*, 133 S. Ct. at 1192. To rebut the presumption of reliance under
3 *Basic*, Questcor must show that (1) “the “market makers” were privy to the
4 truth . . . , and thus that the market price would not be affected by [defendants’]
5 misrepresentations; (2) the truth had ‘credibly entered the market and dissipated the
6 effects of the misstatements’; or (3) something severed ‘the link between the alleged
7 misrepresentation and either the price received (or paid) by the plaintiff.’” *Lawrence E.*
8 *Jaffe Pension Plan v. Household Int’l, Inc.*, 756 F. Supp. 2d 928, 931 (N.D. Ill. 2010).
9 (quoting *Basic*, 485 U.S. at 248-49). Evidence of post-Class Period trading does none of
10 these things.

11 Although Questcor speculates that post-Class Period trades may sever the
12 presumption of reliance, and relatedly, render Plaintiffs atypical, it fails to inform the
13 Court of the vast weight of authority that undercuts this proposition.¹⁷ *See McGuire*,
14 2008 U.S. Dist. LEXIS 14713, at *7 (“Courts have repeatedly rejected the argument that
15 a plaintiff’s post-class period transactions in a defendant company’s securities are
16 inconsistent with a claim of fraud or raise questions as to the plaintiff’s adequacy and
17 typicality.”). Courts around the country routinely hold that:

18 “[T]he fact that a putative class representative purchased
19 additional shares in reliance on the integrity of the market after
20 the disclosure of corrective information has no bearing on
21 whether or not [the representative] relied on the integrity of the
22 market during the class period, that is, before the information at
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24
25 ¹⁷ “[R]epresentative claims are ‘typical’ if they are reasonably co-extensive with those
26 of absent class members; they need not be substantially identical.’ . . . A plaintiff may be
27 found to be atypical if it would be subject to unique defenses such that absent class
28 members will suffer because that plaintiff will be preoccupied with defenses unique to
it.” *Middlesex Cnty. Ret. Sys. v. Semtech Corp.*, No. CV 07-7114 CAS (FMOx), 2010
U.S. Dist. LEXIS 145971, at *8-*9 (C.D. Cal. Aug. 27, 2010).

1 issue was corrected or changed. In other words, the fact that an
2 investor purchased additional shares upon learning the new
3 information does not mean that he or she did not rely on the
4 integrity of the market in purchasing shares before the new
5 information was known. The post-disclosure purchase of the
6 additional shares therefore will not necessarily present
7 individual issues of reliance that render the investor atypical or
8 inadequate to represent class members who did not purchase
9 such additional shares.”

10 *Silverman v. Motorola, Inc.*, 259 F.R.D. 163, 172 (N.D. Ill. 2009) (quoting *In re Monster*
11 *Worldwide, Inc. Sec. Litig.*, 251 F.R.D. 132 (S.D.N.Y. 2008)); *see also Middlesex*, 2010
12 U.S. Dist. LEXIS 145971, at *11-*13 (finding plaintiff’s “post-disclosure purchases do
13 not defeat typicality”); *In re Countrywide Fin. Corp. Sec. Litig.*, 273 F.R.D. 586 (C.D.
14 Cal. 2009) (granting class certification over Skadden’s objections based on, among other
15 things, post-class period purchases); *In re Merck & Co. Sec., Derivative & “ERISA”*
16 *Litig.*, No. MDL 1658 (SRC), 2013 U.S. Dist. LEXIS 13511, at *45-*46 (D.N.J. Jan. 30,
17 2013) (“For example, the post-disclosure purchases by Reynolds and MPERS have ‘no
18 bearing on whether or not [they] relied on the integrity of the market during the class
19 period.’”) (citation omitted); *Fry v. UAL Corp.*, 136 F.R.D. 626, 632 (N.D. Ill. 1991)
20 (“Because subsequent purchases by the plaintiffs are irrelevant to the liability of UAL
21 with regard to alleged misrepresentations effecting the earlier sales of securities by the
22 plaintiffs, such purchases do not render the claims of Fry and Dwyer atypical.”); *Ross v.*
23 *Abercrombie & Fitch Co.*, 257 F.R.D. 435, 446 (S.D. Ohio 2009) (granting class
24 certification over Skadden’s objections and finding a post-class period purchase six days
25 after the class period to be irrelevant); *In re Pfizer Inc. Sec. Litig.*, 282 F.R.D. 38, 46-47
26 (S.D.N.Y. 2012) (“Defendants’ arguments [regarding post-disclosure investments in
27 Pfizer] do not establish that TRSL is subject to a unique defense”); *In re Bally Mfg. Sec.*

1 *Corp. Litig.*, 141 F.R.D. 262, 269 n.7 (N.D. Ill. 1992) (“Bally’s contention that plaintiff
2 Karinsky’s claims are atypical because he purchased stock *after* the proposed class period
3 is unavailing.”); *In re Firstplus Fin Grp., Inc. Sec. Litig.*, No. 3:98-CV-2551-M, 2002
4 U.S. Dist. LEXIS 20446, at *16-*17 (N.D. Tex. Oct. 23, 2002) (disagreeing with
5 defendants that post-class period purchases present a unique defense that destroys
6 typicality). Plaintiffs make no claims concerning post-Class Period statements and it
7 defies logic to presume that Plaintiffs’ post-Class Period trading records could have any
8 bearing on whether Plaintiffs relied on Defendants’ Class Period false statements or the
9 integrity of the market. *Feder v. Elec. Data Sys. Corp.*, 429 F.3d 125, 138 (5th Cir. 2005)
10 (“Reliance on the integrity of the market prior to disclosure of alleged fraud (i.e. during
11 the class period) is unlikely to be defeated by post-disclosure reliance on the integrity of
12 the market.”). Accordingly, Plaintiffs’ post-Class Period transactions in Questcor
13 securities are irrelevant to reliance.

14 In fact, “post-disclosure purchases may well make sound economic sense in an
15 efficient market because the market reflects news of any corrective disclosures in the
16 stock price, typically lowering the stock price.” *Computer Sci.*, 288 F.R.D. at 124; *see*,
17 *e.g.*, *In re Sepracor Inc.*, 233 F.R.D. 52, 56 (D. Mass. 2005) (“‘Rolling over’ an option in
18 an effort to cover some losses is a common investment strategy, and does not
19 demonstrate that a plaintiff failed to rely on the integrity of the market.”); *In re Atlantic*
20 *Fin. Fed. Sec. Litig.*, No. 89-0645, 1990 U.S. Dist. LEXIS 15965, at *10 (E.D. Pa. Nov.
21 28, 1990) (“I cannot infer that the integrity of the market price was irrelevant to these
22 Plaintiffs solely because they made purchases after disclosure of the alleged fraud. . . . It
23 is plausible that Plaintiffs thought once the fraud was disclosed, the true value of the
24 stock would become apparent, the market price would adjust accordingly, and Plaintiffs
25 could decrease their losses by further purchases.”); *Rosen v. Textron, Inc.*, 369 F. Supp.
26 2d 204, 209 (D.R.I. 2005) (finding that “the fact that Bear Sterns concluded, for example,
27 that Textron stock was a good buy at \$32.77, following full disclosure, is essentially
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1 irrelevant to the question whether it relied on misleading information in buying Textron
2 stock at, for example, \$50.51 during the Class Period”).

3 Defendants have no basis for believing that Plaintiffs are not appropriate class
4 representatives, and the mere “possibility” that discovery sought could reveal a unique
5 trading strategy is simply not enough to warrant the burden involved with providing such
6 discovery. Indeed, *In re Connectics Corp. Sec. Litig.*, 257 F.R.D. 572, 576-77 (N.D. Cal.
7 2009), a case that Questcor states “collect[s] cases where ‘district courts have concluded
8 that post-adverse disclosure purchasers cannot be certified as class representatives’”
9 (Milstead Decl., Ex. 1) soundly rejects Questcor’s argument that post-disclosure
10 purchases defeat typicality. While the *Connectics* court recognized that contrary
11 authority exists – including *In re Valence Tech, Sec. Litig.*, No. C 95-20459 JW, 1996
12 U.S. Dist LEXIS 21774 (N.D. Cal. Mar. 14, 1996), a much earlier decision by the
13 Northern District of California – it held that the “the weight of authority appears to favor
14 the position that the purchase of stock after a partial disclosure is not a per-se bar to
15 satisfying the typicality requirement.” *Connectics*, 257 F.R.D. at 577; *see also Middlesex*
16 *Cnty.*, 2010 U.S. Dist. LEXIS 145971, at *11-*13 (finding plaintiff’s “post-disclosure
17 purchases do not defeat typicality”).

18 Accordingly, Plaintiffs’ continued trading of Questcor’s stock after the Class
19 Period – to the extent it even occurred – has no bearing on this litigation or Plaintiffs’
20 reliance on Defendants’ false and misleading statements and is, therefore, irrelevant.
21 Request Nos. 1-10 which seek this information are designed to harass and burden
22 Plaintiffs with unnecessary discovery and should be denied in their entirety.

23 **B. Requests for Production 23-27, 33**

24 **1. Requests at Issue and Responses**

25 **Document Request 23**

26 ALL DOCUMENTS or COMMUNICATIONS upon which YOU relied in drafting
27 the CAC.

Plaintiffs' Responses and Objections

Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead Plaintiff objects to this Request as unduly burdensome and overly broad to the extent it is duplicative of other requests. Moreover, Lead Plaintiff objects to this Request to the extent it seeks material protected by the attorney-client privilege and/or attorney work-product doctrine. Lead Plaintiff also objects to this request on the grounds that non-privileged documents referenced in the CAC are publicly available.

Document Request 24

ALL DOCUMENTS or COMMUNICATIONS CONCERNING each allegation in the CAC.

Plaintiffs' Responses and Objections

Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead Plaintiff objects to this Request as unduly burdensome and overly broad to the extent it is duplicative of other requests. Moreover, Lead Plaintiff objects to this Request to the extent it seeks material protected by the attorney-client privilege and/or attorney work-product doctrine. Lead Plaintiff also objects to this request on the grounds that non-privileged documents referenced in the CAC are publicly available.

Document Request 25

ALL DOCUMENTS or COMMUNICATIONS CONCERNING the sources of the allegations in Paragraphs 39-43 and/or 46-49 of the CAC.

Plaintiffs' Responses and Objections

Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead Plaintiff objects to this Request as unduly burdensome and overly broad to the extent it is duplicative of other requests. Moreover, Lead Plaintiff objects to this Request to the extent it seeks material protected by the attorney-client privilege and/or attorney work-product doctrine. Lead Plaintiff also objects to this request on the grounds that non-privileged documents referenced in the CAC are publicly available.

Document Request 26

ALL DOCUMENTS or COMMUNICATIONS sufficient to identify the “current best practices required by FDA regulations,” referenced in paragraph 36 of the CAC.

Plaintiffs’ Responses and Objections

Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead Plaintiff objects to this Request as premature, insofar as the allegations in ¶ 36 of the CAC will likely be the subject of expert opinion and testimony. Moreover, Lead Plaintiff objects to this Request to the extent it seeks material protected by the attorney-client privilege and/or attorney work-product doctrine. Lead Plaintiff also objects to this request on the grounds that non-privileged documents referenced in the CAC, such as the Food and Drug Administration regulations, are publicly available.

Document Request 27

ALL DOCUMENTS or COMMUNICATIONS sufficient to identify the “accepted medical practice,” referenced in paragraph 37 of the CAC.

Plaintiffs’ Responses and Objections

Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead Plaintiff objects to this Request as premature, insofar as the allegations in ¶ 37 of the CAC will likely be the subject of expert opinion and testimony. Moreover, Lead Plaintiff objects to this Request to the extent it seeks material protected by the attorney-client privilege and/or attorney work-product doctrine. Lead Plaintiff also objects to this request on the grounds that non-privileged documents referenced in the CAC, such as the Food and Drug Administration regulations, are publicly available.

Document Request 33

ALL DOCUMENTS CONCERNING any information that leads YOU to believe that YOUR claims are typical of all purported class members.

Plaintiffs’ Responses and Objections

Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead

1 Plaintiff objects to this Request as premature, insofar as the allegations in ¶ 37 of the
2 CAC will likely be the subject of expert opinion and testimony. Moreover, Lead Plaintiff
3 objects to this Request to the extent it seeks material protected by the attorney-client
4 privilege and/or attorney work-product doctrine. Lead Plaintiff also objects to this
5 request on the grounds that non-privileged documents referenced in the CAC, such as the
6 Food and Drug Administration regulations, are publicly available.

7 **2. Questcor's Argument**

8 Questcor's Document Requests 23-27, and 33 request Plaintiffs produce the
9 documents that purportedly support the substantive and class action allegations Plaintiffs
10 assert in the Complaint. Rather than producing support for the claims they have made in
11 this action, or admitting that no such support exists, Plaintiffs instead contend, without
12 producing a supporting privilege log, that the attorney work-product doctrine protects
13 them from producing certain supportive documents. Plaintiffs further contend that all
14 other supportive documents are publicly available and therefore need not be produced.
15 Neither one of Plaintiffs' objections is well-taken under the law.

16 First, based on the undisputed notion that "Defendants are entitled to know the
17 factual basis of Plaintiffs' claims in order to prepare for trial," courts regularly require
18 plaintiffs to produce "documents that support Plaintiffs' allegations in the [complaint],
19 whether they are in Defendants' possession or in the public domain." Plumbers, 2005
20 WL 1459555, at *6 (citing St. Paul Reinsurance Co. v. Commercial Fin. Corp., 198
21 F.R.D. 508, 513 (N.D. Iowa 2000) ("It is not usually a ground for objection that the
22 information is equally available to the [propounding party] or is a matter of public
23 record."); Nat'l Academy of Recording Arts & Scis., Inc. v. On Point Events, LP, 256
24 F.R.D. 678, 682 (C.D. Cal. 2009) ("[T]o the extent defendant objects that certain
25 request ... seek information equally available to plaintiff, courts have unambiguously
26 stated that this exact objection is insufficient to resist a discovery request."); Hill v. Asset
27 Acceptance, LLC, 2014 WL 3014945, at *7 (S.D. Cal. July 3, 2014) (collecting cases and

1 holding responding party's "objection that the court records are publicly available to
2 [requesting party] is not persuasive").

3 Second, because "underlying fact documents cannot be shielded from discovery"
4 and "[t]here is nothing unusual about a discovery request asking Plaintiffs to produce or
5 identify documents relating to or supporting allegations made in their" complaint, courts
6 also routinely reject the attorney work-product doctrine as a basis for refusing to produce
7 documents that support the allegations in a complaint holding that such a request does not
8 reveal an attorney's thought process. See e.g., Plumbers, 2005 WL 1459555, at *6;
9 Gonzalez v. ETourandTravel, Inc., 2014 WL 1250034, at *2-3 (M.D. Fla. Mar. 26, 2014)
10 (overruling assertion of attorney work-product doctrine in response to document requests
11 seeking all documents that "in any way relates to, references, describes, supports, refutes
12 or pertains to any of the allegations set forth" in the complaint); Coleman v. Dental Org.
13 for Conscious Sedation, LLC, 2011 WL 2600407 (E.D. Mo. June 29, 2011) (same).

14 Rather, courts have compelled production of documents that support a party's
15 claims noting that "[a]ny insight into counsel's understanding of the case" that such a
16 request may reveal is "outweighed by the contribution to the efficacious operation of the
17 judicial system which expedited disclosure provides." Mead Corp. v. Riverwood Natural
18 Resources Corp., 145 F.R.D. 512, 521 (D. Minn. 1992) (compelling production of
19 documents relied upon by defendant in asserting affirmative defense, holding that
20 plaintiff is "attempting to obtain non-privileged, factual evidentiary material which forms
21 factual basis for asserting defenses which will be ultimately disclosed. Any insight into
22 counsel's understanding of the case or of defenses is outweighed by contribution to the
23 efficacious operation of the judicial system which expedited disclosure provides"); In re
24 Jet Network, 2012 WL 2998610, at *5 (rejecting application of attorney work-product
25 doctrine, noting litigation "should not be a game of hide the ball," and "[o]nce both sides
26 have a set of the relevant documents, the [d]efendants will have a fuller picture of what
27 the [t]rustee is relying upon to support his allegations" and "depositions can then proceed
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1 far more efficiently and this proceeding can move towards settlement or trial”).

2 In their June 30, 2014 correspondence, Plaintiffs cited a single case, Central Valley
3 Chrysler-Jeep v. Witherspoon, 2006 WL 2600149 (E.D. Cal. Sept. 11, 2006), in support
4 of their assertion that the attorney-work product protects Plaintiffs from producing
5 documents that support their claims. (Milstead Decl. Ex. 5, at 2.) However, Central
6 Valley supports Questcor’s position. In that case, defendants propounded discovery
7 seeking documents “related to” claims in the complaint. The court rejected plaintiff’s
8 invocation of the attorney work-product doctrine, noting that defendants do not seek
9 documents “such as attorney notes or communications analyzing the legal merits of these
10 contentions.” Id. at *3. Thus, the court held that the attorney work-product doctrine is
11 not applicable where “Defendants do not couch their request for documents in a manner
12 that forces Plaintiffs to disclose their counsel’s mental impressions” or reveal “an
13 attorney’s legal strategy, his intended lines of proof, his evaluation of the strengths and
14 weaknesses of his case, and the inferences he draws from interviews of witnesses.” Id.

15 Here, as in Central Valley, Questcor does not seek the production of documents
16 “such as attorney notes or communications analyzing the legal merits of these
17 contentions.” Id. at *3. Nor does Questcor seek a “compilation of documents” that
18 would “reveal [counsel’s] legal strategy, [their] intended lines of proof, [their] evaluation
19 of the strengths and weaknesses of his case,” or “inferences [they] draw[] from interviews
20 of witnesses.” Id. Instead, as clarified in its correspondence, Questcor only “seeks
21 various documents on which Plaintiffs relied in drafting the CAC.” (Milstead Decl. Ex. 1,
22 at 5.) “Defendants are entitled to know the factual basis of Plaintiffs’ claims” and
23 Plaintiffs cannot misuse the work-product doctrine to avoid producing documentary
24 support for their claims. Plumbers & Pipefitters, 2005 WL 14959555, at *6 (attorney
25 work-product doctrine does not apply to a situation “where Plaintiffs [are] not requested
26 to produce a compilation of documents” but instead, ““merely require[d] ... to produce ...
27 documents that support or relate to various allegations made in the [complaint]”). The

1 Court should compel production of documents responsive to Requests 23-27 and 33
2 within two weeks of the entry of the order compelling production.

3 **3. Plaintiffs' Argument**

4 As with Interrogatories 1 and 3, Questcor again seeks to evade its own
5 investigatory costs and obligations and ride Plaintiffs' coattails by way of Request Nos.
6 23-27 and 33. This is not permitted by the work product doctrine where, as here, the
7 requests are directed at counsel's legal analysis. Who counsel spoke with and what they
8 were told is classic attorney work product. *See MTI II*, 2002 U.S. Dist. LEXIS 13015, at
9 *7-*10.

10 Request Nos. 23-27, for example, generally seek all documents or communications
11 that support any allegation in Plaintiffs' Complaint, including those concerning the
12 sources of certain allegations. As written, these broad Requests would necessarily
13 include Plaintiffs' counsel's internal email communications, investigation memos, mental
14 impressions, attorney notes, legal opinions, interviews, and litigation strategies regarding
15 any aspect of counsel's legal analysis prior to filing the Complaint. Courts have
16 uniformly found that such material is "exactly the type of information protected by the
17 work product privilege." *Regions*, 2012 U.S. Dist. LEXIS 130002, at *9-*10; *see also*
18 *Miller v. Ventro Corp.*, No. C 01-01287 SBA (EDL), 2004 U.S. Dist. LEXIS 6913, at *8-
19 *9 (N.D. Cal. Apr. 21, 2004) ("Plaintiffs need not disclose that counsel spoke to certain
20 witnesses, or the substance of any interviews" and "need not link up any particular CW
21 with a paragraph in the complaint, and may identify the witnesses in any order.");
22 *Harmonic*, 245 F.R.D. at 427 (finding that "preliminary notes or other memoranda
23 written during the interviews of these witnesses . . . would be considered protected work
24 product"); *Cent. Valley Chrysler-Jeep v. Witherspoon*, No. CV F 04-6663 AWI LJO,
25 2006 U.S. Dist. LEXIS 67933, at *10-*11 (E.D. Cal. Sept. 11, 2006) ("Discovery of an
26 attorney's selection and compilation of documents is prohibited to the extent it would
27 reveal 'an attorney's legal strategy, his intended lines of proof, his evaluation of the
28

1 strengths and weaknesses of his case, and the inferences he draws from interviews of
2 witnesses.’”) (citation omitted).¹⁸

3 Moreover, Questcor fails to identify any meaningful hardship that would justify
4 piercing the work product protection afforded these materials. *See Cent. Valley Chrysler-*
5 *Jeep*, 2006 U.S. Dist. LEXIS 67933, at *10-*11 (“Under Rule 26(b)(3), ‘documents and
6 tangible things prepared by a party or his representative in anticipation of litigation,’ may
7 not be ordered produced unless the party seeking them demonstrates “‘substantial need
8 [for] the materials’ and ‘undue hardship [in obtaining] the substantial equivalent of the
9 materials by other means.’””). Indeed, many of the documents Questcor seeks through
10 Requests 23-27 and 33 are either specifically identified in the Complaint and available to
11 Questcor, already in Questcor’s possession, or equally accessible and publically available
12 to it. For example, Plaintiffs have provided Questcor with all documents they have
13 obtained from third parties that have been subpoenaed. Moreover, as previously
14 discussed, Plaintiffs’ Initial Disclosures list the names of individuals and entities
15 Plaintiffs believe are likely to have discoverable information, including all those that
16 Plaintiffs have interviewed.¹⁹ Finally, Questcor has unfettered access to each of its public
17 filings with the Securities and Exchange Commission, press releases, conference call
18 transcripts and other Company materials that may have been relied upon in the Complaint.

19
20 ¹⁸ Request No. 33 similarly seeks “any information that leads YOU to believe YOUR
21 claims are typical of all purported class members.” Aside from being hopelessly vague,
22 this Request infringes directly upon Plaintiffs’ counsel’s analysis of the legal merits
23 regarding typicality.

24 ¹⁹ Request No. 25, for example, asked Plaintiffs to produce “ALL DOCUMENTS or
25 COMMUNICATIONS CONCERNING the sources of the allegations in Paragraphs 39-
26 43 and/or 46-49 of the [Complaint].” The allegations contained in these paragraphs relate
27 primarily to general Company practices, including Questcor’s use of paid consultants to
28 promote Acthar, and the composition and frequency of Company meetings. Plaintiffs’
Initial Disclosures, which Plaintiffs have methodically broken down into specific
categories, contain a subgroup of individuals described as “Current and Former Questcor
Directors, Officers, Employees, Representatives, Contactors and Associated Physicians.”
See Luedeke Decl., Ex. B. From this list, Questcor, in a much better position than
Plaintiffs to know what type of knowledge these individuals possess, can glean the
sources of the information it seeks with limited effort.

1 *See, e.g., Torres*, 2010 U.S. Dist. LEXIS 87621, at *18 (holding plaintiffs “[had] not
2 shown their compelling need for the materials” to overcome work product protection
3 because they had “obtained the same information through other discovery or public
4 information”); *Baldoni*, 2007 U.S. Dist. LEXIS 14127, at *21-*23 (granting in part a
5 motion for a protective order, resulting in defendant not responding to certain
6 interrogatories, because “plaintiff [had] already obtained evidence from the public
7 realm,” and “[t]he information sought [was] not tailored...with any more precision than
8 the information already in plaintiff’s possession or in the public realm”). In fact, the only
9 documents potentially unavailable to Questor are those clearly subject to work product
10 protection for which Questcor has not demonstrated a substantial need or undue hardship
11 in obtaining. *See Regions*, 2012 U.S. Dist. LEXIS 130002, at *12 (“Ultimately,
12 Defendants show no ‘substantial need for the particular information sought, beyond [their
13 need to] reduc[e] their investigative costs by riding on Plaintiffs’ coattails[.]’ Thus,
14 Defendants have not met their burden of showing the work product protection should be
15 invaded.”).²⁰

16 Questcor’s Motion with respect to Request No. 33 is also unreasonably premature.
17 During the parties’ April 30, 2014 meet-and-confer, Plaintiffs informed Questcor that
18 beyond the production of Class Period transaction records that Plaintiffs had already
19 agreed to produce pursuant to Request Nos. 2-10, Plaintiffs were unaware of any
20 documents responsive to Request No. 33. Subsequent to that April 30 conference,
21 Questcor made no further objections to Plaintiffs’ Response, leaving Plaintiffs to presume
22 that their concession of Class Period transactions records would satisfy Request No. 33.
23 By failing to make reasonable efforts to resolve its remaining concerns regarding Request
24

25 ²⁰ Request Nos. 26, 27 and 33 concern allegations that will be proven or disproven with
26 expert testimony. The cut-off for expert discovery in this action is currently set for April
27 14, 2015. *See Milstead Decl.*, Ex. 8. Aside from documents reviewed by Plaintiffs’
28 counsel concerning Food and Drug Administration regulations, Plaintiffs currently
possess no additional documents responsive to these requests.

No. 33, or even making Plaintiffs aware of the existence of those ongoing concerns, Questcor abandoned its discovery obligations as to this Request and prematurely sought Court intervention.

Accordingly, the Court should deny Questcor's Motion as to Requests 23-27 and 33.

V. Questcor's Motion to Compel Production of Documents or Supplemental Responses to Document Requests 2-22, 28-30, 31-32, 34-36, and 43

A. Document Requests At Issue

Document Request 11

ALL COMMUNICATIONS between or among YOU and QUESTCOR.

Plaintiffs' Responses and Objections

Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead Plaintiff objects to this Request as it seeks material protected by the attorney-client privilege and/or attorney work-product doctrine.

Document Request 12

ALL COMMUNICATIONS between or among YOU and the INDIVIDUAL DEFENDANTS.

Plaintiffs' Responses and Objections

Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead Plaintiff objects to this Request to the extent it seeks material protected by the attorney-client privilege and/or attorney work-product doctrine. Lead Plaintiff further objects to this Request because it is premature to the extent it seeks documents that are subject to ongoing or future discovery – including information obtained during the depositions of, and document production by Defendant and various third parties – or expert opinion.

Document Request 13

ALL COMMUNICATIONS between or among YOU and Streetsweeper.org, identified in Paragraph 86 of the CAC, or anyone affiliated with Streetsweeper.org, CONCERNING QUESTCOR or QUESTCOR SECURITIES.

Plaintiffs' Responses and Objections

Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly broad in its use of "affiliated with." Lead Plaintiff further objects to this Request to the extent it seeks material protected by the attorney-client privilege and/or attorney work-product doctrine.

Subject to and without waiving the foregoing objections, Lead Plaintiff will produce responsive, relevant, non-privileged documents to the extent such documents exist and are in its possession, custody or control.

Document Request 14

ALL COMMUNICATIONS between or among YOU and Citron Research, identified in Paragraph 11 of the CAC, or anyone affiliated with Citron Research, CONCERNING QUESTCOR or QUESTCOR SECURITIES.

Plaintiffs' Responses and Objections

Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly broad in its use of "affiliated with." Lead Plaintiff further objects to this Request to the extent it seeks material protected by the attorney-client privilege and/or attorney work-product doctrine.

Subject to and without waiving the foregoing objections, Lead Plaintiff will produce responsive, relevant, non-privileged documents to the extent such documents exist and are in its possession, custody or control.

Document Request 15

ALL COMMUNICATIONS between or among YOU and any third party medical insurance company, including, but not limited to, Aetna Inc., Blue Cross Blue Shield of Michigan, UnitedHealthcare, or Humana, CONCERNING QUESTCOR.

Plaintiffs' Responses and Objections

1 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
2 Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly
3 broad in its use of “medical insurance company.” Lead Plaintiff further objects to this
4 Request to the extent it seeks material protected by the attorney-client privilege and/or
5 attorney work-product doctrine.

6 Subject to and without waiving the foregoing objections, Lead Plaintiff will
7 produce responsive, relevant, non-privileged documents to the extent such documents
8 exist and are in its possession, custody or control.

9 **Document Request 16**

10 ALL COMMUNICATIONS between or among YOU and any physicians
11 CONCERNING QUESTCOR or QUESTCOR SECURITIES.

12 **Plaintiffs’ Responses and Objections**

13 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
14 Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly
15 broad in its use of “physicians.” Lead Plaintiff further objects to this Request to the
16 extent it seeks material protected by the attorney-client privilege and/or attorney work-
17 product doctrine.

18 Subject to and without waiving the foregoing objections, Lead Plaintiff will
19 produce responsive, relevant, non-privileged documents to the extent such documents
20 exist and are in its possession, custody or control.

21 **Document Request 17**

22 ALL COMMUNICATIONS between or among YOU and any medical researchers
23 CONCERNING QUESTCOR or QUESTCOR SECURITIES.

24 **Plaintiffs’ Responses and Objections**

25 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
26 Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly
27 broad in its use of “medical researchers.” Lead Plaintiff further objects to this Request to
28

1 the extent it seeks material protected by the attorney-client privilege and/or attorney
2 work-product doctrine.

3 Subject to and without waiving the foregoing objections, Lead Plaintiff will
4 produce responsive, relevant, non-privileged documents to the extent such documents
5 exist and are in its possession, custody or control.

6 **Document Request 18**

7 ALL COMMUNICATIONS between or among YOU and any Acthar patients
8 CONCERNING QUESTCOR or QUESTCOR SECURITIES.

9 **Plaintiffs' Responses and Objections**

10 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
11 Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly
12 broad in its use of "Acthar patients." Lead Plaintiff further objects to this Request to the
13 extent it seeks material protected by the attorney-client privilege and/or attorney work-
14 product doctrine.

15 Subject to and without waiving the foregoing objections, Lead Plaintiff will
16 produce responsive, relevant, non-privileged documents to the extent such documents
17 exist and are in its possession, custody or control.

18 **Document Request 19**

19 ALL COMMUNICATIONS between or among YOU and any current and/or
20 former QUESTCOR employees CONCERNING QUESTCOR or QUESTCOR
21 SECURITIES.

22 **Plaintiffs' Responses and Objections**

23 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
24 Plaintiff objects to this Request to the extent it seeks material protected by the attorney-
25 client privilege and/or attorney work-product doctrine.

26 Subject to and without waiving the foregoing objections, Lead Plaintiff will
27 produce responsive, relevant, non-privileged documents to the extent such documents

1 exist and are in its possession, custody or control.

2 **Document Request 20**

3 ALL COMMUNICATIONS between or among YOU and any stock analysts
4 CONCERNING QUESTCOR or QUESTCOR SECURITIES.

5 **Plaintiffs' Responses and Objections**

6 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
7 Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly
8 broad in its use of "stock analysts." Lead Plaintiff further objects to this Request to the
9 extent it seeks material protected by the attorney-client privilege and/or attorney work-
10 product doctrine.

11 Subject to and without waiving the foregoing objections, Lead Plaintiff will
12 produce responsive, relevant, non-privileged documents to the extent such documents
13 exist and are in its possession, custody or control.

14 **Document Request 21**

15 ALL COMMUNICATIONS between or among YOU and any known or reputed
16 short seller CONCERNING QUESTCOR or QUESTCOR SECURITIES.

17 **Plaintiffs' Responses and Objections**

18 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
19 Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly
20 broad in its use of "known or reputed short seller." Lead Plaintiff further objects to this
21 Request to the extent it seeks material protected by the attorney-client privilege and/or
22 attorney work-product doctrine.

23 **Document Request 22**

24 ALL COMMUNICATIONS between or among YOU and any other third party
25 CONCERNING QUESTCOR or QUESTCOR SECURITIES.

26 **Plaintiffs' Responses and Objections**

27 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
28

1 Plaintiff further objects to this Request to the extent it seeks material protected by the
2 attorney-client privilege and/or attorney work-product doctrine.

3 Subject to and without waiving the foregoing objections, Lead Plaintiff will
4 produce responsive, relevant, non-privileged documents to the extent such documents
5 exist and are in its possession, custody or control.

6 **Document Request 28**

7 ALL DOCUMENTS or COMMUNICATIONS related to YOUR claim that YOU
8 have suffered damages.

9 **Plaintiffs' Responses and Objections**

10 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
11 Plaintiff objects to the term "damages" as vague and ambiguous. Lead Plaintiff also
12 objects to the extent this Request seeks to impose any requirement beyond that
13 permissible under Federal Rules of Civil Procedure 26 and/or the scheduling order in this
14 case. Lead Plaintiff further objects to this request on the grounds that it is premature
15 insofar as the calculation of damages will be the subject of expert analysis and testimony.

16 Subject to and without waiving the foregoing objections, Lead Plaintiff will
17 produce responsive, relevant, non-privileged documents to the extent such documents
18 exist and are in its possession, custody or control.

19 **Document Request 29**

20 ALL DOCUMENTS CONCERNING YOUR decision to seek to serve as a class
21 representative in this action, or otherwise to commence litigation against QUESTCOR,
22 including but not limited to:

- 23 a. The identity of the individuals responsible for the decision to bring this
24 action;
25 b. When YOU decided to bring this action;
26 c. The basis on which YOU decided to bring this action.

27 **Plaintiffs' Responses and Objections**

1 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
2 Plaintiff objects to this Request as premature insofar as no motion for class certification
3 has yet been filed. Moreover, Lead Plaintiff objects to the phrase “bring this action” as
4 vague and ambiguous.

5 Subject to and without waiving the foregoing objections, Lead Plaintiff will
6 produce responsive, relevant, non-privileged documents to the extent such documents
7 exist and are in its possession, custody or control.

8 **Document Request 30**

9 ALL DOCUMENTS CONCERNING any inquiries or investigations conducted by
10 YOU in connection with the allegations in the CAC.

11 **Plaintiffs’ Responses and Objections**

12 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
13 Plaintiff objects to this Request is hopelessly vague and overbroad, rendering it
14 unintelligible as drafted. Lead Plaintiff also objects to this Request to the extent it calls
15 for privileged or confidential information, including information protected from
16 disclosure by the attorney-client privilege and the attorney work-product doctrine. Lead
17 Plaintiff further objects to this request on the grounds that the non-privileged documents
18 referenced in the CAC are publicly available.

19 Subject to and without waiving the foregoing objections, Lead Plaintiff will
20 produce responsive, relevant, non-privileged documents to the extent such documents
21 exist and are in its possession, custody or control.

22 **Document Request 31**

23 ALL DOCUMENTS CONCERNING YOUR relationship with any law firm
24 representing YOU in this action (including, without limitation, any individual attorney
25 who is now, or who was, associated with, or a member of, any such law firm), including,
26 but not limited to, DOCUMENTS CONCERNING:

27 a. Any financial or other arrangements that exists or existed between YOU and
28

1 any such lawyer or law firm, whether in this action or otherwise;

2 b. YOUR relationship with such lawyer or law firm in connection with any
3 other litigation in which such lawyer or law firm has acted on YOUR behalf; and

4 c. Any social, familial, or other relationship that exists or has existed at any
5 time between YOU and any such lawyer or law firm.

6 **Plaintiffs' Responses and Objections**

7 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
8 Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly
9 broad in its use of the terms "financial," "otherwise," "other litigation," and "other
10 relationship." Lead Plaintiff further objects to this Request on privacy grounds and to the
11 extent that it seeks or requires disclosure of information which is protected from
12 disclosure by the attorney-client privilege, the attorney work-product doctrine, and/or any
13 other applicable privilege or immunity.

14 **Document Request 32**

15 ALL DOCUMENTS CONCERNING the actual or contemplated retainer of
16 counsel by YOU in this action, including, but not limited to, DOCUMENTS
17 CONCERNING:

18 a. Any arrangement to pay a fee, including a legal fee, to anyone with respect
19 to this action;

20 b. The person who will advance and who is responsible for payment of the fees,
21 costs, and expenses incurred in connection with this action;

22 c. The person who will share in the recovery; and

23 d. Any arrangement to share a fee in this action with any person not a member
24 of YOUR counsels' firms.

25 **Plaintiffs' Responses and Objections**

26 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
27 Plaintiff objects to this Request as vague, ambiguous, unduly burdensome and overly

1 broad in its use of the terms “fees,” “costs,” “expenses,” and “recovery.” Lead Plaintiff
2 further objects to this Request on privacy grounds and to the extent that it seeks or
3 requires disclosure of information which is protected from disclosure by the attorney-
4 client privilege, the attorney work-product doctrine, and/or any other applicable privilege
5 or immunity.

6 **Document Request 34**

7 ALL DOCUMENTS CONCERNING any COMMUNICATION, relationship or
8 agreements between YOU and YOUR counsel, on the one hand, and any other Plaintiff,
9 party or members of the proposed class in the action, on the other hand, CONCERNING
10 the subject matter of this action.

11 **Plaintiffs’ Responses and Objections**

12 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
13 Plaintiff further objects to this Request to the extent it is unduly burdensome, seeks
14 documents not relevant to any claim or defense and calls for the production of documents
15 not within Lead Plaintiff’s possession, custody or control. In addition, Lead Plaintiff
16 objects to the to this Request on privacy grounds and to the extent that it seeks or requires
17 disclosure of information which is protected from disclosure by the attorney-client
18 privilege, the attorney work-product doctrine, and/or any other applicable privilege or
19 immunity.

20 **Document Request 35**

21 ALL DOCUMENTS CONCERNING any litigation, arbitration, or other
22 proceeding (excluding the above-captioned action) in which YOU were an actual or
23 contemplated party or witness.

24 **Plaintiffs’ Responses and Objections**

25 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
26 Plaintiff further objects to this Request as vague, ambiguous, unduly burdensome and
27 hopelessly overbroad as it seeks all documents “CONCERNING” any “litigation,
28

1 arbitration, or other proceeding” without any reasonable limitation in time or scope.
2 Lead Plaintiff also objects to this Request to the extent it requests the production of
3 documents and information that are subject to confidentiality agreements entered in any
4 action. Lead Plaintiff further objects to this Request as it seeks irrelevant information
5 and is not reasonably calculated to lead to the discovery of admissible evidence. In
6 addition, Lead Plaintiff objects to the to this Request on privacy grounds and to the extent
7 that it seeks or requires disclosure of information which is protected from disclosure by
8 the attorney-client privilege, the attorney work-product doctrine, and/or any other
9 applicable privilege or immunity.

10 **Document Request 36**

11 ALL DOCUMENTS CONCERNING any litigation, arbitration, or other
12 proceeding within the previous ten years (excluding the above-captioned action)
13 involving YOU pertaining to an alleged violation of any state or federal law or arising
14 from, or related to, the purchase, sale, or other acquisition or disposition of any
15 SECURITIES of any publicly-traded organization.

16 **Plaintiffs’ Responses and Objections**

17 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
18 Plaintiff further objects to this Request as vague, ambiguous, unduly burdensome and
19 hopelessly overbroad as it seeks all documents “CONCERNING” any “litigation,
20 arbitration, or other proceeding” without any reasonable limitation in time or scope.
21 Lead Plaintiff also objects to this Request to the extent it requests the production of
22 documents and information that are subject to confidentiality agreements entered in any
23 action. Lead Plaintiff further objects to this Request as it seeks irrelevant information
24 and is not reasonably calculated to lead to the discovery of admissible evidence. In
25 addition, Lead Plaintiff objects to this Request on privacy grounds and to the extent that it
26 seeks or requires disclosure of information which is protected from disclosure by the
27 attorney-client privilege, the attorney work-product doctrine, and/or any other applicable
28

1 privilege or immunity.

2 **Document Request 43**

3 ALL COMMUNICATIONS between or among YOU and ALL the individuals
4 and/or entities identified in section I.C. through I.G. of YOUR INITIAL DISCLOSURES.

5 **Plaintiffs' Responses and Objections**

6 Lead Plaintiff incorporates herein each of the foregoing General Objections. Lead
7 Plaintiff objects to this Request to the extent it seeks material protected by the attorney-
8 client privilege and/or attorney work-product doctrine.

9 Subject to and without waiving the foregoing objections, Lead Plaintiff will
10 produce responsive, relevant, non-privileged documents to the extent such documents
11 exist and are in its possession, custody or control.

12 **B. Questcor's Argument**

13 Finally, Plaintiffs have stated they will produce documents responsive to Requests
14 2-22, 28-30, and 43 if documents exist, but to date have refused to disclose whether
15 responsive documents exist for each of the three Lead Plaintiffs and for each of those
16 twenty-five requests. Plaintiffs have also affirmatively agreed to produce documents
17 responsive to Requests 31-32, and 34-36 but have not yet done so. (Milstead Decl. ¶ 12.)
18 It has now been over four months since Questcor served its discovery requests and
19 Questcor has no meaningful insight to the documents it can expect to receive. The
20 Federal Rules require greater diligence and cooperation from Plaintiffs.

21 Under Federal Rule of Civil Procedure 26(g), a party responding to document
22 requests must "make a timely, reasonable, and diligent search for all documents
23 responsive to the [propounding party's] discovery requests." Zander, 2011 WL 834190,
24 at *1 (compelling production of documents that "reasonably should have been located
25 months ago"). If the responding party does not find responsive documents after a timely,
26 reasonable and diligent search, the "party should so state with sufficient specificity to
27 allow the Court to determine whether the party made a reasonable inquiry and exercised
28

1 due diligence.” Rogers v. Girbuino, 288 F.R.D. 469, 485 (S.D. Cal. 2012); A. Farber &
2 Partners, Inc. v. Garber, 234 F.R.D. 186, 189 (C.D. Cal. 2006) (“A party responding to a
3 Rule 34 production request ... is under an affirmative duty to seek that information
4 reasonably available to [it] from [its] employees, agents, or others subject to [its]
5 control.”) (alterations in original). Thus, if a responding party fails to “demonstrate that a
6 diligent search and reasonable inquiry has been made in an effort to locate the requested
7 documents,” courts have compelled the responding party to “either produce the
8 documents, or amend their response to state that a diligent search and reasonable inquiry
9 have been conducted, and to state the reason they are unable to comply (e.g., the
10 document never existed; or not in their possession, custody or control).” Waterbury,
11 2008 WL 2018432, at *6.

12 Here, Plaintiffs have represented either in written response or during the parties’
13 meet and confer process that they would produce documents responsive to Requests 2-22,
14 28-30 and 43, to the extent they exist. (See Milstead Decl. ¶¶ 5-6.) Following the April
15 30, 2014 meet and confer, Questcor made three separate written requests inquiring about
16 the status of these requests. (Milstead Decl. Exs. 2-4.) Nearly three months have passed
17 since Plaintiffs’ representation that they would look for responsive documents. Plaintiffs
18 have not only failed to produce responsive documents, they have not even indicated
19 whether responsive documents exist or even confirmed that they have in fact conducted a
20 diligent and reasonable inquiry to find responsive documents. Moreover, while Plaintiffs
21 have affirmatively agreed to produce documents response to Requests 31-32, and 34-36,
22 they have not yet done so. Plaintiffs’ continued unwillingness to provide even the most
23 basic of information during the meet and confer process constitutes the “gamesmanship”
24 that “produces needless delay, wasting the Court’s and the parties’ time, contrary to the
25 purpose of the” federal rules. Lane, 2011 WL 1004825, at *4. The Court should not
26 countenance Plaintiffs’ approach and compel Plaintiffs, within two weeks of entry of the
27 order, to produce documents responsive to Requests 2-22, 28-30, 31-32, 34-36, and 43 or
28

1 to promptly supplement their written responses “to state that a diligent search and
2 reasonable inquiry have been conducted, and to state the reason they are unable to
3 comply (e.g., the document never existed; or not in their possession, custody or control).”
4 Waterbury, 2008 WL 2018432, at *6.²¹

5 **C. Plaintiffs’ Argument**

6 Questcor’s rash assertions regarding Plaintiffs’ discovery efforts and general pace
7 of production are misguided. Almost immediately after Plaintiffs provided authority to
8 Questcor supporting certain of Plaintiffs’ objections to Questcor’s Interrogatories and
9 Requests as it had requested (*see* Milstead Decl., Ex. 5), Questcor demanded Plaintiffs
10 commence their production of responsive documents, requested “additional information”
11 regarding many of Plaintiffs’ objections over which Plaintiffs believed the parties had
12 reached accord, and threatened a motion to compel. *Id.*, Ex. 6. Within two days
13 Plaintiffs clarified that it was their understanding that the parties were in agreement that
14 Plaintiffs would “produce relevant, non-privileged documents – to the extent they exist
15 and/or for the time period April 4, 2011 through September 21, 2012 – in response to a
16 vast majority of Questcor’s individual requests.” *Id.*, Ex. 7. Plaintiffs additionally
17 notified Questcor that they were “in the process of gathering these materials and will
18 produce them as soon as possible” and sought confirmation from Questcor that all
19 outstanding issues concerning Plaintiffs’ responses and objections had been addressed.
20 *Id.* Plaintiffs’ attempt at compromise, however, fell on deaf ears. After receiving no
21 further response from Questcor, on July 24, 2014, Plaintiffs commenced Lead Plaintiff
22 West Virginia Investment Management Board’s rolling production of responsive
23 documents. Luedeke Decl., Ex. A.

24
25 ²¹ Questcor is entitled to moving costs pursuant to Federal Rule 37(a)(5)(A) which
26 provides the Court must “require the party...whose conduct necessitated the motion, the
27 party or attorney advising that conduct, or both to pay the movant’s reasonable expenses
28 incurred in making the motion.” Fed. R. Civ. Pro. 37(a)(5)(A). Plaintiffs’ baseless
objections and constant delay in responding to Questcor and providing requested
information are not justified and have necessitated the filing of this present motion.

1 Despite the initiation of Plaintiffs' production, four days later Questcor served
2 Plaintiffs with this Motion. Even while faced with Questcor's Motion, however,
3 Plaintiffs continued their good faith discovery efforts. As such, on August 1, 2014,
4 Plaintiffs provided Questcor with Lead Plaintiff Plumbers & Pipefitters National Pension
5 Fund's initial production of documents and Plaintiff Steven Glucksberg's complete set of
6 responsive documents. *See id.*, Ex. C. To Plaintiffs' knowledge, Plaintiff Glucksberg is
7 the only party to this litigation that has completed its document production to date.²² *See*
8 *id.*

9 While Questcor's desire to begin preparing its opposition to class certification
10 appears to be the primary factor driving its discovery push, its concerns are unfounded.
11 First, the deadline for defendants to file their opposition to class certification is nearly
12 three months away. *See* Milstead Decl., Ex. 9. Plaintiffs have already initiated their
13 document production and anticipate substantially completing their production of all
14 relevant, non-privileged, responsive documents within three weeks. This will allow
15 Questcor ample time to utilize Plaintiffs' documents as it deems necessary for purposes
16 of briefing its opposition.

17 Second, rather than focusing its Motion on materials that may be pertinent to class
18 certification as it could have, much of the discovery Questcor seeks to compel goes to the
19 merits of Plaintiffs' case. Had Questcor specifically requested that Plaintiffs begin their
20 production with these types of documents, Plaintiffs could have already provided
21 Questcor with all Class Period transaction records which, in turn, would have alleviated
22 some of the concerns raised by Questcor in its Motion. Further, since the cut-off for non-
23 expert discovery in this action is not until December 19, 2014 (*see* Milstead Decl., Ex. 8),
24 Questcor could have then continued negotiating with Plaintiffs over requests not relevant

25
26 ²² It is notable that while Questcor complains about the timeliness of Plaintiffs'
27 production of documents responsive to its Requests, individual defendants did not
28 commence their production of documents in response to Lead Plaintiffs' First Set of
Requests for the Production of Documents until July 30, 2014. *See* Luedeke Decl., Ex. D.

1 to class certification and brought a motion at some point in the future if it still deemed
2 doing so necessary.

3 Questcor's request for moving for costs pursuant to Federal Rule of Civil
4 Procedure 37(a)(5)(A) is simply irrational. Pursuant to Rule 37(a)(5)(A), "the court must
5 not order this payment if: (i) the movant filed the motion before attempting in good faith
6 to obtain the disclosure or discovery without court action; (ii) the opposing party's
7 nondisclosure, response, or objection was substantially justified; or (iii) other
8 circumstances make an award of expenses unjust." Should this Court not deny
9 Questcor's Motion in its entirety as Plaintiffs request, Plaintiffs' objections are certainly
10 "substantially justified." *See Colaco v. ASIC Advantage Simplified Pension Plan*, No.
11 5:13-cv-00972-PSG, 2014 U.S. Dist. LEXIS 98185, at *9-*12 (N.D. Cal. July 18, 2014)
12 (holding that "Plaintiffs . . . were substantially justified in objecting to the RFPs" where
13 "the case law on this issue is not fully delineated or settled"). Moreover, Questcor's
14 failure to respond to Plaintiffs' good faith offers to compromise flies in the face of its
15 discovery obligations and renders its Motion premature, making an "award of expenses
16 unjust." *See* Fed. R. Civ. P. 37(a)(5)(A).

17 For the reasons set forth herein, Plaintiffs respectfully request that the Court deny
18 Questcor's Motion to Compel in its entirety.

19 DATED: August 6, 2014

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